I. INTRODUCTION

On November 19, 1997, Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth") and Canal Electric Company ("Canal") (collectively, the "Companies") filed with the Department of Public Utilities, now renamed the Department of Telecommunications and Energy ("Department"), a plan to review their electric restructuring proposal ("Plan"). The Department docketed this matter as D.P.U./D.T.E. 97-111.

This Order presents the background, procedural history, a description of the Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 (the "Act"),[1] a general overview of the Plan, the applicable standard of review, an issue by issue summary of the Plan, and our analysis and findings. The analysis and findings address whether the Plan is consistent, substantially complies, or complies fully with the applicable provisions of the Act. While approving the implementation of the Plan, this Order directs Cambridge and Commonwealth to make an additional filing to comply with the Department's directives contained herein.

II. BACKGROUND

On March 15, 1996, the Department opened a generic rulemaking to guide the development and evaluation of individual electric company restructuring plans. Electric Industry Restructuring, D.P.U. 96-100 (1996) ("D.P.U. 96-100"). On May 1, 1996, the Department issued proposed rules. D.P.U. 96-100, Explanatory Statement and Proposed Rules, May 1, 1996. On December 30, 1996, the Department, in the same docket, issued its plan for a restructured electric

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[1] On November 25, 1997, Chapter 164 of the Acts of 1997, entitled "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein," was signed by the Governor.

industry, including Model Rules and a Legislative Proposal. D.P.U. 96-100, Electric Restructuring Plan: Model Rules and Legislative Proposal, December 30, 1996. On January 16, 1998, the Department proposed draft rules implementing the Act for public comment. D.P.U./D.T.E. 96-100, Order Proposing Regulations and Soliciting Comment, January 16, 1998. On February 20, 1998, the Department issued final rules implementing the Act. D.P.U./D.T.E. 96-100, Electric Industry Restructuring Rules, February 20, 1998. [23]

III. PROCEDURAL HISTORY

Pursuant to notice duly issued, the Department received initial comments on the Companies' Plan from three entities: the Companies, Enron Capital and Trade Resources ("Enron"), and Harvard University. The Department conducted five public hearings in the Companies' service territories on December 22, 1997, January 5, 1998, January 8, 1998, January 27, 1998, and January 29, 1998 in Cambridge, Marstons Mills, New Bedford, Plymouth,

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[2] In addition, the Department approved a settlement of the Massachusetts Electric Company Restructuring Plan, D.P.U. 96-25, on February 26, 1997, and an amendment of its restructuring plan on July 14, 1997, D.P.U. 96-25-A. On December 23, 1997, the Department issued an Order finding that the Settlement previously approved by the Department substantially complies or is consistent with the Act. D.P.U./D.T.E. 96-25-B, and issued an Order on its compliance filing on January 20, 1998. The Department approved a settlement of the restructuring plan of Eastern Edison Company, D.P.U./D.T.E. 96-24, on December 23, 1997. That Order is the subject of several motions for reconsideration, now pending. On January 20, 1998, the Department issued an Order on Eastern Edison Company's compliance filing. The Department also approved a settlement of the restructuring plan of Boston Edison Company, D.P.U./D.T.E. 96-23, on January 28, 1998. That Order is on appeal, before the Supreme Judicial Court of the Commonwealth. On February 20, 1998, the Department issued an Initial Order approving, subject to review and reconciliation, the restructuring plan of Western Massachusetts Electric Company, D.T.E. 97-120. On February 26, 1998, the Department issued an Intial Order, subject to review and reconciliation, the restructuring plan of Fitchburg Gas and Electric Light Company, D.T.E. 97-115.

and Cambridge, respectively. The Department convened a procedural conference on January 6, 1998, and issued a procedural schedule on January 16, 1998. D.P.U./D.T.E. 97-111, Interlocutory Order on Procedural Schedule (1998) ("Interlocutory Order").

Pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention in the proceeding. In addition, the Department granted the petitions for leave to intervene filed by the following entities: Division of Energy Resources ("DOER"); Associated Industries of Massachusetts; Towns of Barnstable et al., Barnstable County, and the Cape Light Compact (the "Compact"); Boston Edison Company; Cape and Islands Self-Reliance Corporation ("CISR"); Conservation Law Foundation ("CLF"); Energy Pacific; Enron; Action, Inc., Massachusetts Energy Directors Association, Massachusetts Senior Action Council, and Cape Organization for the Rights of the Disabled (collectively, Low Income Intervenors ("LII")); Massachusetts Institute of Technology ("MIT"); Northeast Energy Associates ("NEA"); Northeast Energy Efficiency Council ("NEEC"); Save Our Region's Economy ("SORE"); and Western Massachusetts Electric Company. The Department granted limited participant status to the following entities or persons: Lawrence P. Cole, Ph. D.;[4] Eastern Edison Company/Montaup Electric Company; IRATE, Inc. ("IRATE"); the Honorable Ruth W. Provost; and Unitil/Fitchburg Gas and Electric Light Company. From January 20, 1998 through January 29, 1998, the Department conducted seven days of evidentiary hearings at its offices in Boston.

In support of their filing, the Companies sponsored the testimony of seven witnesses: Russell D. Wright, president and chief operating officer of the Companies; Robert H. Martin,

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4 On January 2, 1998, Lawrence P. Cole withdrew his participation in the proceeding.

manager of revenue requirements and contract administration; Henry LaMontagne, manager of pricing and rate design; Michael R. Kirkwood, director of supply administration; Lisa M. Carloni, director of marketing for Cambridge and Commonwealth; and Lauren A. Foley, manager of customer service for Cambridge and Commonwealth.

CISR sponsored the testimony of Timothy Woolf, senior associate, Synapse Energy Economics. The Compact sponsored the testimony of four witnesses: Robert S. Jones, Selectman, Town of Sandwich; Margaret T. Downey, Interim Assistant County Administrator for Barnstable County; Paul Chernick, president of Resource Insight; and Jonathan Wallach, vice-president of Resource Insight.

The Companies, the Attorney General, the Compact, Enron, IRATE, LII, CISR, and SORE submitted initial briefs. The Companies, Acushnet Rubber,[5] the Attorney General, the Compact, Enron, LII, and MIT filed reply briefs. CLF and NEEC submitted a joint reply brief.

IV. OUTSTANDING PROCEDURAL ISSUES

A. Motion for Reconsideration of Interlocutory Order on Procedural Schedule

1. Introduction

On January 23, 1998, pursuant to 220 C.M.R. § 1.10 (10), the Compact filed a Motion for Reconsideration of the Department's Interlocutory Order on Procedural Schedule ("Compact Motion"). On January 30, 1998, the Companies filed a response to the Compact Motion ("Companies' Response").

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5 Acushnet Rubber is a member of SORE, an intervenor in the proceeding.

2. Standard of Review

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

3. Positions of the Parties

a. The Compact

The Compact contends that the Department should reconsider its January 16, 1998 Interlocutory Order because (1) the issues raised in the filing will radically change the manner in which Commonwealth's customers will receive electric service; (2) Commonwealth has failed to offer a compelling argument for a speedy resolution of the proceeding; and (3) under the Department's schedule, the due process rights of the Compact will be violated (Compact Motion at 2).

The Compact requests that the Department establish a schedule that would allow parties to conduct further discovery, to file supplemental testimony, and to engage in additional cross-examination of Commonwealth's witnesses (id. at 5). Further, the Compact urges the Department to issue an initial order by March 1, 1998, and to reserve the right to conduct further hearings (id.).

b. The Companies

The Companies argue that the Compact Motion should be denied, because it raises an issue not properly the subject of reconsideration (Companies' Response at 2). The Companies state that the Department has interpreted 220 C.M.R. § 1.11(10) as limiting reconsideration to final orders only (id., citing NYNEX, D.P.U. 94-50 (Interlocutory Order) at 3, n.3 (July 14, 1994)).

The Companies further argue that if the Department were to consider the Compact Motion ripe for consideration, the Department should deny the Motion because it fails to satisfy the Department's applicable standard for reconsideration (id. at 2). According to the

Companies, the Compact merely sets forth an argument previously offered by the Compact and rejected by the Department that the schedule amounts to a denial of due process (id.). The Companies also contend that the Compact failed to raise any new facts either during hearings or in direct testimony that would warrant the Department's reconsideration of the procedural schedule (id. at 3). Finally, the Companies argue that the Act provides no discretion for the Department to delay a final order until after March 1, 1998 (id. at 4).

4. Analysis and Findings

The Department must first determine whether a motion for reconsideration is appropriate in this instance. The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Compact seeks the Department's reconsideration of the procedural schedule set forth in the Department's January 16, 1998 Interlocutory Order. The term "interlocutory" is defined as something intervening between the commencement and the end of a proceeding which decides some point or matter, but is not a final decision of the whole controversy.[6] See Black's Law Dictionary. Inasmuch as the Order at issue is interlocutory in nature, and does not make any final disposition regarding the Companies' petition, there is no basis in the Department's rules for the motion for reconsideration. See Housatonic Water Works Company, D.P.U. 90-284, at 3 (1991).

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6 Although the Department is aware of at least one instance where the Department reconsidered an interlocutory order without discussing 220 C.M.R. § 1.11(10), this was departure from our procedural rules that the Department declines to repeat.

The Department's procedural rule is based on the principle of administrative efficiency. The Department's ability to make final determination on issues and carry out its regulatory duties would be seriously hampered if it were required to reconsider every preliminary, procedural and interlocutory decision. This principle is also recognized in the Massachusetts Administrative Procedure Act ("MAPA"), G.L. c. 30A. Under the MAPA, administrative agency actions and rulings which are procedural or interlocutory in nature are not immediately reviewable under G.L. c. 30A, § 14.[7] Cella, Administrative Law and Practice, Massachusetts Practice Series, Vol. 40, § 1756. Further, appeals are permitted only from final decisions or orders of the Department. G.L. c. 25, § 5. Boston Gas Company v. Department of Public Utilities, 368 Mass. 780 (1975). Accordingly, in the interest of administrative efficiency and pursuant to the Department's procedural rules, the Department denies the motion for reconsideration.

Nevertheless, even if the Department were to consider the motion substantively, the Department would find that the Company has not satisfied the Department's standard for reconsideration. The Department finds that the Compact has alleged no unknown or undisclosed facts that warrant the Department's reconsideration. Rather, the Compact merely reiterates and reargues the issue, raised to the Department at the procedural conference and addressed in the Interlocutory Order, that the schedule amounts to a denial of due process. The Department has found that the procedural schedule affords all parties an opportunity for a full and fair hearing in accordance with G.L. c. 30A, § 11. See Interlocutory Order at 2-4.

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[7] Pursuant to G.L. c. 30A, § 14, any person aggrieved by a final decision of an agency in an adjudicatory proceeding is entitle to judicial review of that decision.

Further, the Compact has failed to illuminate any mistake or inadvertence that would warrant the Department's reconsideration of the schedule.

B. Motion for Protective Treatment

1. Introduction

On November 19, 1997, the Companies filed pursuant to G.L. c. 25, § 5D a Motion for Protective Treatment ("Companies' Motion") of the following portions of the filing: (1) Power Contract Mitigation Report, designated Attachment 1; (2) the plans for divestiture of purchased power agreements, designated Attachment 2; and (3) the plans for divestiture of generating assets, designated Attachment 3. On February 13, 1998, the Companies submitted redacted versions of Attachments 1, 2 and 3. No party to the proceeding opposes the Companies' Motion.[8]

2. Standard of Review

General Laws. c. 25, § 5D provides that the Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings before the Department. Section 5D also states that "[t]here shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection." Thus, the burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of

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8 The Department notes that the Companies have entered into non-disclosure agreements with those parties seeking access to the information for which the Companies have moved for protective treatment.

such a need, the Department must consider the presumption in favor of disclosure and the specific reasons that disclosure of the information benefits the public interest. The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994).

3 Positions of the Companies

The Companies argue that disclosure of the information related to the Companies' efforts to reduce the purchased power contract costs would have a chilling effect on the Companies' ability to discuss such reductions in the future (id. at 4). Further, the Companies raise the concern that disclosure of the divestiture solicitations related to the sale of both their purchased power contracts and generating assets will lower the prices offered for the assets, and thereby harm the Companies' customers by creating higher transition costs (id. at 6).

4. Analysis and Findings

The Department finds that disclosure of the information for which the Companies are seeking protection could undermine the Companies' efforts to secure lower transition costs for their customers. Affording confidentiality to this information would likely add value to the Companies' assets, and increase their ability to negotiate lower prices for their purchased power contracts. Accordingly, the Department finds that the Companies have provided sufficient reasons to protect the information in accordance with G.L. c. 25, § 5D and hereby grants the Companies' Motion. Accordingly, materials described in the Companies' Motion will be excepted from public disclosure under G.L. c. 25. § 5D, and G.L. c. 66, § 10 and c. 4, § cl. 26(a) until the Department's final action on the Companies' divestiture of generating assets. Protection under § 5D will also extend to the following portions of the transcripts: Tr. 3, at 32-60; Tr. 4, at 177-217.

V. STANDARD OF REVIEW

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 25, §§ 5, 9, 18, 19, and 20; c. 111, §§ 5K and 142N; and c. 164, §§ 1 through 33, 69G through 69R, 71 through 75, and 76 et seq. This authority was most recently revised and augmented by the Act. The primary goal of the Act is to establish a new electric utility "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier" in order to "promote reduced electricity rates." St. 1997, c. 164, § 1.

Among other things, the Act authorizes and directs the Department to "require electric companies organized pursuant to the provisions of [G.L. c. 164] to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section." St. 1997, c. 164, § 193 (G.L. c. 164, 1A(a)). Pursuant to this statutory authority, the Department will review a Company's restructuring plan for compliance with applicable provisions of the Act.

The Act sets forth explicit directions for the Department's review of restructuring plans. Plans must contain two key features. First, they must provide, by March 1, 1998, a rate reduction of 10 percent for customers choosing the standard service transition rate from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. Id. Second, each plan must be designed to implement a restructured electric generation market by March 1, 1998 by requiring the electric company to offer retail access to all customers as of that date. Id.

Plans must also include the following important provisions:

(1) an estimate and detailed accounting of total transition costs eligible for recovery pursuant to G.L. c. 164, § 1G(b);

(2) a description of the company's strategies to mitigate transition costs;

(3) unbundled prices or rates for generation, distribution, transmission, and other services;

(4) proposed charges for the recovery of transition costs;

(5) proposed programs to provide universal service for all customers;

(6) proposed programs and mandatory charges to promote energy conservation and demand-side management;

(7) procedures for ensuring direct retail access to all electric generation suppliers;

(8) discussions of the impact of the plan on the Company's employees and the communities served by the Company; and

(9) a mandatory charge per kilowatthour for all consumers to support the development and promotion of renewable energy projects;

Id. at § 37 (G.L. c. 25, § 20(a)(1)), § 193 (G.L. c. 164, 1A(a)).

The Act directs the Department to allow the implementation of plans, such as the Companies', filed before the enactment date: "An electric company that has filed a plan which substantially complies or is consistent with this chapter [i.e., G.L. c. 164, as amended] as determined by the [D]epartment shall not be required to file a new plan, and the [D]epartment shall allow such plans previously approved or pending before the [D]epartment to be implemented." Id. at § 193 (G.L. c. 164, § 1A(a)). The Department is governed by the statutory directives in determining whether a plan should be approved for implementation. In doing so, the Department applies a two-part standard of review. First, for those sections of a plan governed by G.L. c. 164, the Department must determine whether the plan "substantially" complies or is consistent with the Act as it amends G.L. c. 164. For all other features of the plan, the Department must determine unqualified compliance of those features with applicable provisions of the Act.

We first state the standard of review in determining whether a plan substantially complies or is consistent with G.L. c. 164. The statute directs the Department to approve any plan that was filed before enactment, provided it substantially complies or is consistent with G.L. c. 164, as amended. Id. at § 193 (G.L. c. 164, § 1A(a)). Although the word "substantially" is not defined in the Act, its meaning may be determined from usage and context. G.L. c. 4, § 6, cl. Third. In applying this standard, the Department considers that an action "substantially complies" if it achieves "compliance with the essential requirements" of G.L. c. 164. Black's Law Dictionary, Sixth Edition (1991). An action that is compatible with and not contradictory of a statute is "consistent" with the statute. Id. The use of these terms in the disjunctive leads to the conclusion that the Legislature has given the Department a measure of discretion to effect the important public purposes of the Act. In addition, the Legislature has mandated swift implementation of the Act (i.e., before March 1, 1998). Because the phrase "substantially complies or is consistent with" is imprecise, the Department supplements its understanding of the words in the statute (customarily, "the principal source of insight into legislative purpose" Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984)), with a consideration of "the statute's purpose and history." Sterilite Corp. v. Continental Casualty Co., 397 Mass. 837 at 839. A more limiting interpretation would defeat the Act's purposes and fail to give "a fair consideration of the conditions attending its passage." Fickett v. Boston Fireman's Relief Fund, 220 Mass. 319, 320 (1915).

Next, we address the standard of review for those sections of a restructuring plan that are not governed by G.L. c. 164. In such instances, the Department must require unqualified compliance with the Act's mandates. Thus, in reviewing sections of a restructuring plan not governed by G.L. c. 164, the Department must determine that those sections conform to the Act before it may approve a restructuring plan.

VI. ISSUES

A. Standard Offer

1. Standard Offer and Competitive Pricing

a. The Act

The Act requires that a distribution company provide a standard service transition rate for the period from March 1, 1998, to January 1, 2004, at prices and terms approved by the Department. St. 1997, c. 164, § 193 (G.L. c. 164, § 1B).[9] The Act requires that distribution companies purchase electricity for standard offer service after a competitive bid process. Id. The

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[9] The standard service transition rate is the generation component of the service package that is to provide the 10 percent rate reduction beginning on March 1, 1998. It is typically referred to as the "standard offer" or "standard offer rate," so that, for example, a reference to a standard offer price of 2.8 cents per KWH would refer to the price for the generation portion of the service package that will provide the 10 percent rate reduction.

Act further requires that, if and to the extent that retail prices for standard offer power are below the wholesale costs of standard offer power, the Department shall investigate whether it is appropriate to extend, through new legislation, a comparability credit for non-standard offer customers. Id. at § 308. (The comparability credit is a deferral mechanism for competitive suppliers intended to be comparable to the distribution company's deferral mechanism under the standard offer.)

b. The Plan

The standard offer implements several objectives of the Plan. The standard offer provides a ten percent rate reduction for those customers who elect standard offer service. The standard offer also facilitates the transition to retail competition by establishing a schedule of rates that increase over time, thereby encouraging customers to move into the competitive market during the seven year term of standard offer service. The Plan provides that standard offer service be secured through a competitive bid process. The retail price for standard offer service is 2.8 cents per KWH in 1998 and increases each year to a maximum of 5.1 cents per KWH in 2004.

c. Positions of the Parties

i. Enron, The Compact, and SORE

Enron, the Compact, and SORE argue that standard offer prices are well below market price forecasts, a condition which will inhibit competition. These parties contend that the low standard offer prices, especially the price of 2.8 cents per KWH in 1998, will prevent true retail access from occurring on March 1, 1998, and thereby undermine the Legislature's mandate. The Compact contends that the rates are purely arbitrary, based on standard offer rates other companies filed, and that the Companies have not performed any calculations to determine appropriate rates for their service territories (Enron Brief at 3, Compact Brief at 12, SORE Brief at 13).

The Compact provided evidence that the costs of providing standard offer service are higher than the proposed prices (DTE-RR-23, DTE-RR-24, Exh. CL-84, p. 25, n. 21). The Compact and Enron recommend that the Department issue an order that includes a 4 cents per KWH standard offer price in 1998. (Compact Brief at 12, Enron Reply Brief at 3). This is below the 4.3 cents per KWH cost of providing standard offer service calculated by the Compact's expert witnesses, Paul Chernick and Jonathan Wallach. The Compact argues, however, that 4 cents per KWH is the lowest price supported by the record (Compact Brief at 17).

The Compact argues that the record in this case supports a higher standard offer price while the record in previous restructuring cases, such as D.T.E. 96-23, did not (id. at 15). The Compact and Enron argue that the Department should not approve the standard offer rates in this case based on its previous findings because of the different factual record in this case (Compact Brief at 15). SORE makes a similar argument and claims that the prices for firm delivery into the Commonwealth service territory have recently ranged between 3.0 and 3.2 cents/KWH (SORE Brief at 13).

ii. Attorney General

The Attorney General argues that the Companies' rate schedule for standard offer service, although consistent with restructuring plans approved by the Department, should not be accepted since the Companies' own evidence supports a higher market price of power. The Attorney General supports the elimination of both the difference between wholesale and retail prices in 1998-2000 and future additions to any deferred cost balances (Attorney General Brief at 10).

iii. Companies

The Companies argue that the proposed standard offer service is consistent with the Act and with other plans that have been filed and approved by the Department. The Companies argue that the Plan provides a 10 percent rate reduction to standard offer customers, using standard offer rates that the Department approved in the MECo, EECo, and BECo restructuring plans (Companies Reply Brief at 10).

The Companies argue that standard offer prices should not be set at market levels because standard offer service is to provide a transition to retail competition. The Companies argue that both the Act and Department precedent in D.P.U. 96-100 and the other restructuring plans recognize the transitional nature of standard offer service (Companies Reply Brief at 11). The Companies claim that maintaining similar or identical standard offer prices among the various distribution companies will give customers in all service classes and territories roughly similar access to competitive alternatives from suppliers (Companies Brief at 28).

The Companies also argue that setting standard offer prices at market levels would obviate the need for default service, since default service is indexed to market prices. The

Companies argue that neither the Legislature nor the Department intended to eliminate default service and replace it with standard offer service (id. at 28).

The Companies assert that the standard offer price structure maintains the Companies' financial stability. They argue that a standard offer price of 4.5 cents/KWH for Commonwealth would require a reduction in the access charge of 1.7 cents/KWH which would lead to an underrecovery of transition costs of approximately $60 million in 1998, and that Commonwealth would soon reach the $75 million limit of its borrowing capability (Exh. DTE-RR-22, Companies Reply Brief at 23). The underrecovery would accumulate in a reconciliation account together with interest equal to the carrying charge for the fixed component of the access charge, which is 13.51 percent (Exh. CEC-1, Tab H at 4, 9, sch. 1, 9 of 12). The base access charge will be adjusted at the end of every year to allow recovery to the extent permitted (id. at 9). Any amounts in the reconciliation account that would increase the access charge above the allowable level will be deferred to the following year, and will earn a return as described above (id. at 9). The Companies contend the underrecovery would put them at financial risk, as well as result in increased costs to customers (Companies Brief at 29).

d. Analysis and Findings

The evidence in the record supports a finding that the Plan provides standard offer service to customers beginning on March 1, 1998 and continuing through December 31, 2004, and that it does so at appropriate prices that, along with the other unbundled components of the rates discussed below, provide a ten percent rate reduction from rates in effect during August, 1997. The Plan also provides that standard offer service be procured through a competitive bid process.[10] The Companies' proposal thus meets the requirements of the Act.

The Department has considered and rejected in other restructuring cases the arguments against the standard offer pricing made by Enron, the Compact, SORE, and the Attorney General (who supported identical standard offer prices in three other plans, including one approved less than two months ago). These intervening parties argue that the standard offer price is below current and projected market prices and thus will inhibit competition. They argue that this record contains more evidence than in other cases that market prices are at or above 3.0 cents per KWH in 1998, so that the Department can and should set the standard offer price above that level for 1998, thereby encouraging a larger percentage of customers to leave standard offer service for competitive suppliers in 1998. The estimates of current market prices range from 3.0 cents per KWH (from SORE) to 4.6 cents per KWH (the Compact).

The Department rejects these arguments in this case for the same reasons we rejected them in the previous restructuring cases. First, the Act emphasizes the transitional nature of the standard offer. See, e.g., St. 1997, c. 164 § 1 (G.L. c. 164, § 1B(b)). The Act refers to the standard offer as the "standard service transition rate," which is to be in place for "a transition period of seven years" and, in conjunction with the other components of unbundled rates, provides a 10 percent rate reduction. The findings and declarations of the Act show that the

10 The Companies' auction to procure competitive supply of standard offer service resulted in no bids. The Companies have not determined how they may address the results of the unsuccessful auction. These facts are discussed further below.

Legislature intended an expedient and orderly transition from regulation to competition in the generation sector. Interpreting the Act as requiring that standard offer prices be equal to or greater than wholesale market prices would ignore the Legislature's clear directive to provide an orderly transition to competition in the generation sector. The Companies' proposal does provide an orderly transition, as the standard offer price increases steadily over time, which will provide an increasing incentive for customers to move to competitive suppliers.

Second, the Companies' standard offer price schedule accomplishes other important goals enunciated in the Act that would be jeopardized by the intervenors' proposals. Recovery of net, non-mitigable transition costs "on a non-bypassable basis and in a manner that does not result in an increase in rates to customers of electricity corporations" is one such goal. St. 1997, c. 164, §§ 1(t) and (u) (G.L. c. 164, § 1G). The intervenors' proposal jeopardizes this goal in this case because of the immutable characteristics of the Companies' rate structure. The record shows unequivocally that an increase in the standard offer price for 1998 and thereafter would force immediate deferral of a portion of the Companies' access charge, which would likely raise rates and could put at risk the Companies' orderly recovery of transition costs.

An example illustrates this point. Under the proposal in the Plan, the Companies could procure standard offer service in 1998 for a wholesale price up to 3.2 cents per KWH, at a time when the standard offer price is 2.8 cents per KWH. The Plan calls for the difference between the wholesale and standard offer prices, 4 mills, to be deferred for later collection, such deferral being necessary in order to achieve the 10 percent rate reduction required by the Act. The deferred amount would accrue interest at a rate based on customer deposits[11] (about 6 percent). If the standard offer price were raised to 3.2 cents, however, a corresponding 4 mill decrease in the access charge would be required in order to achieve the 10 percent rate reduction. This transition cost deferral would accrue interest at a rate equal to the Companies' rate of return on capital (about 13 percent). This higher carrying cost would increase the total amount of transition costs customers would be required to pay. In its guidelines for standard offer service in D.P.U. 96-100, at 137, the Department stated that the provision of standard offer service should not result in additional stranded costs for distribution companies. The Department declines to depart from that goal here. The Department will not force customers to pay higher interest on deferred transition costs in the name of enhancing short-term competitive access to the retail market on more favorable terms. Full competition in generation is the goal, but the Legislature prescribes that it be reached through an "orderly transition."

Third, the Act provides the Department with authority to address the potential situation about which the intervenors take issue. As the Department has noted with respect to other restructuring plans, in the event that the Companies are able to sell their generation facilities and entitlements on favorable terms, the Companies may decrease the access charge and increase standard offer prices accordingly at that time.[12] D.T.E. 96-23, at 19. Further, the Department is fully aware of the remedy provided by the Act if wholesale prices remain above

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[11] Interest on customer deposits is equivalent to the rate paid on a two-year treasury note for the preceding calendar year.

[12] For this reason the Department does not find compelling the Companies' argument that the standard offer should be consistent across the state.

the standard offer price:

> Cognizant of the potential competitive problem posed by standard offer rates below market rates, the Act requires that, if the retail prices for standard offer power are below the wholesale price, then the Department shall investigate whether it is appropriate to extend, through new legislation, a comparability credit (a deferral mechanism for competitive suppliers intended to be comparable to the Company's deferral mechanism under the standard offer) to non-standard offer customers. St. 1997, c. 164, § 308. Accordingly, the Department will monitor the relationship between standard offer prices and wholesale costs and will initiate an investigation in the future if circumstances warrant.

D.T.E. 96-23 at 19. The same approach is appropriate in this case. In fact, if the Department were to adopt the intervenors' position that standard offer prices must always be equal to or greater than market prices, Section 308 of the Act would be rendered mere verbal surplussage as the condition precedent to its invocation (namely, standard offer prices lower than market prices) would never exist. Further, the Act allows for the possibility that standard offer prices may be below market prices without any action being required by the Department. Section 308 provides that upon such a finding the Department shall investigate whether or not to extend a comparability credit through additional amendment to G.L. c. 164.

Based on the foregoing, the Department finds that the standard offer price and terms proposed by the Companies are in substantial compliance and are consistent with G.L. c. 164, are approved, and should be implemented on March 1, 1998.

2. Standard Offer and Backstop Service

a. Introduction

Backstop service is the electricity supply provided by a purchaser of a distribution company's generating assets or purchased power contracts to supply a distribution company's standard offer customers. If the purchase and sale agreement includes the backstop service obligation, the purchaser is obligated to provide the electricity supply at guaranteed wholesale rates. The obligation to provide backstop service arises only if a distribution company's standard offer auction does not generate sufficient resources to serve all its standard offer customers. The Act does not address the issue of backstop service.

b. The Plan

The Plan provides a schedule of rates that serve as the maximum wholesale prices that the Company will pay to standard offer suppliers. The rate schedule begins at 3.2 cents per KWH in 1998 and increases to 5.1 cents per KWH in 2004-2005 (Exh. CEC-1, at 33). The Companies plan to backstop their standard offer service obligation at predetermined prices as part of their divestiture of generation resources (Exh. CEC-1, at 30, 33). The Companies' purchase and sale agreements through the divestiture process will include an obligation that purchasers of generation and purchased power contracts provide electricity to serve the Companies' standard offer service. (Tr. 2, at 33-34; Tr. 4, at 193). That obligation will be invoked if a standard offer auction does not result in a sufficient supply of standard offer service (Tr. 4, at 125-127; Tr. 5, at 131-132). In the meantime, the Companies will use their generation resources to supply standard offer service (id.).

c. Positions of the Parties

i. Compact and Enron

The Compact and Enron contend that the price caps on backstop service are below market and needlessly depress bid prices for generation assets and power purchase contracts, resulting in increased transition costs that customers will pay. The Compact's expert witnesses (Chernick and Wallach) submitted an estimate of the effect that the backstop obligation will have on the sale price of the Companies' generating and power purchase assets (DTE-RR-23). The results show losses that purportedly range from tens of millions to hundreds of millions of dollars. (Compact Brief at 20-22; Enron Brief at 6-8).

Enron points out that on cross-examination the Companies admitted that some bidders may view the backstop obligation as a negative feature and therefore decrease their bid price (Exhibit ECT 1-11; Enron Brief at 7). The Companies also acknowledged that bidders with the most optimistic view of the market would be affected the most by the backstop obligation since the Companies anticipate that the most optimistic bidder would purchase the generation resources (Tr.2, at 64-66).

The Compact recommends that the Companies be directed to conduct their auctions to solicit separate bids which include and exclude the backstop obligation. Through such an auction, the Compact claims that the Companies will be able to maximize the total economic benefits for all ratepayers (Compact Brief at 22).

ii. The Companies

In opposition to Enron and the Compact, the Companies contend that it is not possible to determine whether the backstop obligation will depress the value of the Companies' generation resources. The Companies maintain that there are too many unknown assumptions and variables that play into bidders' decisions for Enron and the Compact to predict the outcome. Variables include perceived future market prices, sales forecasts, pattern and use for standard offer load, and a "first strike" advantage that bidders may gain by capturing initial market share through supplying standard offer service even if bidders incur a loss (Companies Reply Brief at 17). The Companies state that, even assuming that the backstop obligation could depress the value, it would not be to the detriment of the customers. To the extent that the backstop obligation diminishes the residual value credit, then the customers would necessarily receive additional benefits through a lower-price standard offer (Id.). The Companies also argue that the Department should approve the proposal for supplying standard offer service through a backstop provision as part of their auction of generation resources because of the precedent set with previous orders (Id.).

d. Analysis and Findings

In opposing the backstop provision, the Compact and Enron presented evidence that in the early years of the transition period, the standard offer price may be lower than the market price. Other evidence, such as that presented by SORE, supports a finding that this may be true at most for 1998 and that, beginning in 1999, the standard offer price would be above projected market prices. The Companies also presented testimony, as was the case with respect to standard offer pricing, that bidders may take many factors into account in determining their bids for the Companies' generating plants and entitlements, that the relationship between the standard offer price and market prices in 1998 is only one of many such factors, and that some bidders may view the backstop obligation as a benefit while others may not.

The backstop provision would oblige the purchasers of the Companies' generating assets and entitlements to supply power for standard offer service at prices that would not exceed the wholesale price caps set forth in the Plan (Exh. CEC-1, Tab D at 33). The backstop obligation guarantees a supply of power for standard offer service at known wholesale prices, thus providing the Companies' customers with the equivalent of insurance against wholesale prices for standard offer service that might exceed the wholesale price caps in the plan. Providing such rate stability will ensure that the rate reductions required by the Act will continue through the transition period without causing greater deferrals either of standard offer costs or transition charges should wholesale prices to supply standard offer service exceed the Compact's and Enron's projections.

The Compact and Enron have not presented sufficient evidence that removing a feature of the Plan that provides such rate stability will bring any benefit to customers. This is true in two respects. First, the evidence that the backstop obligation will depress the value in divestiture of the Companies' generating assets and entitlements is inconclusive, at best. The Compact and Enron rely on an exhibit prepared by the Compact's expert witnesses that purports to estimate the impact of the backstop obligation on the sale price of the Companies' assets (DTE RR-23). The Compact's witnesses based their calculations on several assumptions: first, that the competitive market price for power would be greater than the standard offer wholesale price caps through all seven years of the transition period; second, that a potential purchaser of the Companies' assets would reduce his or her bid by an amount equal to the net present value of the difference between the competitive market price and the wholesale price cap, times the total amount of standard offer sales; and third, that the total dollar loss from the backstop is based on a constant percent of sales served under standard offer service for each year during the transition period, (i.e., 100 percent of sales from standard offer service for each year of the transition period) (DTE RR-23, at Table 1).

These assumptions would have to be true for the Compact's argument to be supported by the record. The record does not support all of these assumptions. As discussed above with respect to standard offer service, the record contains several estimates of market price, some of which show that the standard offer wholesale cap price is above the projected market price for most or all of the transition period. On this point, the record is, at best equivocal (Exh. AG-8; SORE Brief at 11-13). The Compact's other two assumptions find no support in the record. No witness refuted the Companies' testimony that bidders may take factors into account other than a nominal difference between one projected market price and the wholesale price cap. The Department notes that in some scenarios presented in DTE-RR-23, Table 1, the purported depression in value related to the backstop, even accepting all of the Compact's assumptions, is relatively small and could easily be exceeded by such strategic factors as a "first strike" advantage discussed by the Companies' witnesses. Finally, the Compact provided no support for DTE-RR-23's assumption that the standard offer will constitute a constant percentage of total retail sales throughout the transition period, a simplifying assumption that renders suspect the remaining analysis in Table 1. DTE-RR-23 contains estimates of the loss due to the backstop provision, ranging from $9,017 (in the event the standard offer service constitutes 10 percent of the retail sales during each year of the transition period, and the market price is equal to the Companies' estimate in Exh.AG-8) to $415,965 (in the event the standard offer service constitutes 100 percent of retail sales during each year of the transition period, and the market price is as the Compact's witnesses estimate). The Compact's witnesses provide no basis for determining what the actual impact might be, nor does this range of estimated loss from the backstop take into account the value bidders may place on the strategic factors discussed above or the value to customers of procuring standard offer service at known prices throughout the transition period.

The Department will not trade the rate insurance and stability provided by the backstop obligation for purported increases in the sale price of the Companies' assets that are not supported by substantial evidence in the record. The cap on the wholesale rates, which is part of the backstop obligation, will allow the Companies to procure electricity for standard offer customers at set prices regardless of the future wholesale price of power. The cap protects customers from the rate increases that would occur if future wholesale prices exceed the cap.

The Department finds that the backstop provision provides a benefit to customers by reducing price volatility and risk. The evidence provided by the Compact and Enron in this case proves no offsetting benefit that would support elimination of the backstop obligation. Therefore, the Department finds that the divestiture of the Companies' generating assets and entitlements subject to the backstop obligation substantially complies with G.L. c. 164.

B. Retail Delivery Rates and Rate Reductions

1. Introduction

a. The Act

The Act specifies that the retail access date ("RAD") will be no later than March 1, 1998. St. 1997, c. 164, § 193 (G.L. c. 164, § 1A). The Act further states that beginning on March 1, 1998, a distribution company must design rates, so that (1) all customers on standard offer service will receive at least a 10 percent reduction in the cost for electric service when compared to the undiscounted rates in effect during August 1997 or such other date as the

Department may determine to be representative of 1997 rates for such company; and (2) all rates are unbundled to reflect separately the charges for distribution service, transmission service, transition service, standard offer service and any other charges added pursuant to any provision of law. St. 1997, c. 164, § 193 (G.L. c.164, §§ 1B, 1D).

b. The Plan

The Plan includes rates designed to comply with the Act by implementing the following steps. First, Cambridge and Commonwealth each developed an unbundled cost of service study ("COSS") using calendar year 1995 adjusted costs (Exh. CEC-1, Tab D at 13, 17; Tr. 1, at 62). Both Cambridge and Commonwealth adjusted their COSS to reflect the base rates, fuel charge, and conservation charges that were in effect in August 1997 (Exh. CEC-1, Tab D at 13, 17; Exh. DTE-11; Exh. DTE-21; Tr. 1, at 66-90).[13] Also, the costs functionalized as transmission were replaced with the Federal Energy Regulatory Commission ("FERC")-based transmission revenue requirement (Exh. CEC-1, Tab D at 15, 18). According to Cambridge and Commonwealth, the COSS uses methods for functionalization and allocation that were approved by the Department in their last rate cases (id., Tab D at 14, 18, , citing Cambridge Electric Light Company, D.P.U. 92-250 (1993); Commonwealth Electric Company, D.P.U. 90-331(1991).

Once the unbundled COSS were developed, Cambridge and Commonwealth each calculated a uniform transition charge. The difference between 90 percent of the total revenue

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13 Instead of including the 6.5 cents per KWH fuel charge that customers were billed during 1997, Commonwealth used a fuel charge of 6.7 cents per KWH which was the amount it was allowed, but did not choose to, charge under a Fuel Charge Stabilization Agreement with the Attorney General. This matter is discussed in Section VI.B.2.b.

requirement based on August 1997 revenue levels and the sum of the standard offer, transmission, distribution, and customer components, determined the proposed uniform transition charge (id.). Both Cambridge and Commonwealth determined the revenues for the standard offer component by multiplying the proposed standard offer rate of 2.8 cents per KWH by the adjusted 1995 KWH sales. The transmission component was based on the FERC-based transmission revenue requirement and the distribution and customer components were obtained from the 1995 COSS. This calculation produced a uniform transition charge of 2.73 cents per KWH for Cambridge and 4.26 cents per KWH for Commonwealth (id.).

The next step in the rate design process was to determine the design of the individual unbundled rate schedules. First, the total target revenue for each rate class was set at 90 percent of the class's August 1997 revenue requirement (id.). The Standard Offer charge was set at 2.8 cents per KWH for each rate class; the uniform transition charge was set at 2.73 cents per KWH for each of Cambridge's rate classes[14] and 4.26 cents per KWH for each of Commonwealth's rate classes; and the transmission charge was determined by using the FERC-based revenue requirement on the basis of either KWH, if the rate is non-demand billed, or KW if the rate is demand billed (id., Tab D at 16). The customer charge for each rate class was set at 90 percent of the class's customer charge in effect in August 1997. For those classes that are billed a demand charge, the Companies set the distribution demand charge at the difference between 90 percent of each class's demand charge in effect in August 1997 and

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14 Cambridge proposed to include a portion of the transition charge as part of the distribution demand charge in those instances where the current energy charges are low when compared to the proposed standard offer charge and transition charge.

the sum of that class's transition demand charge and transmission demand charge (id.). Lastly, the remainder of the total target revenue for each customer class was collected through the distribution charge on a KWH basis (id.).

Cambridge and Commonwealth propose rates that would unbundle existing tariffs into generation, distribution/transition and transmission components (id., Tab D at 9). Both Companies propose to eliminate the fuel charge, conservation charges, and energy conservation service charge on March 1, 1998 (id., Tab D at 9, 10). The Companies propose to add a transmission cost adjustment and a transition cost adjustment to their delivery service rates (id., Tab D at 10). For customers who do not have a competitive supplier, the Companies propose to make available standard offer service and default service (id.).

2. Ten Percent Rate Reduction

a. Introduction

Two issues have been raised regarding the calculation of the 10 percent rate reduction: (1) whether Commonwealth is using the appropriate baseline fuel charge from which the 10 percent rate reduction is calculated; and (2) whether the Companies may use deferrals in order to meet the 10 percent rate reduction.

b. Commonwealth's Baseline Fuel Charge

Commonwealth proposes to use a fuel charge of 6.7 cents per KWH as a component of the baseline rates from which the 10 percent rate reduction is calculated (Exh. CEC-1, Tab D at 13). The fuel charge that appeared on customers' bills for all of 1997 was 6.5 cents per KWH. See Commonwealth Electric Company, D.P.U. 96-3D (1997); Commonwealth Electric Company, D.P.U. 97-3A (1997); Commonwealth Electric Company, D.P.U. 97-3B (1997); Commonwealth Electric Company, D.P.U. 97-3C (1997).

i. Positions of the Parties

(A) The Attorney General

The Attorney General asserts that Commonwealth's proposed post-retail access rates do not reflect a 10 percent reduction from the rates in effect in August 1997 because the rate reduction is based on rates that were never in effect (Attorney General Brief at 9). The Attorney General also states that Commonwealth's argument that the required reduction should be measured against some rate that "could have been" in effect should be rejected (id.). Further, the Attorney General argues that no other rate than the 6.5 cents per KWH fuel charge in effect during August 1997 can be more representative of 1997 rates since it was in effect for the entire year (id.).

(B) The Companies

The Companies state that Commonwealth had the discretion to increase the fuel charge from 6.5 to 6.7 cents per KWH in 1997 according to the Fuel Charge Stabilization Settlement ("Stabilization Settlement") that was signed by the Attorney General and Commonwealth and approved by the Department in Commonwealth Electric Company, D.P.U. 94-3A (1994) (Exh. DTE-5). Since Commonwealth was entitled to recover 6.7 cents per KWH, Commonwealth argues that the 6.5 cents per KWH fuel charge represents a discount from the approved level of the fuel charge (id.). Therefore, the Companies argue that since the 6.7 cents per KWH fuel charge is an "undiscounted" rate, it should be used as the baseline for the calculation of the 10 percent rate reduction and complies with the Act (Companies Brief at 30). The Companies state that the 6.7 cents per KWH fuel charge is representative of 1997 rates for two reasons: (1) it is the amount permitted under the Stabilization Settlement; and (2) it is consistent with the actual fuel cost incurred during the applicable quarter of 1997 (Companies Reply Brief at 28). Therefore, the Companies argue that they have used an appropriate, undiscounted and representative rate, consistent with the Act, to compute the 10 percent rate reduction (id.).

ii. Analysis and Findings

The Companies argue that the 6.5 cents per KWH fuel charge was a discounted rate, since Commonwealth had the ability to increase its fuel charge to 6.7 cents per KWH in 1997 under the Stabilization Settlement. Commonwealth indicates that it intends to recover the entire amount of the current under-recovery in the fuel charge account, including the amount that resulted from the fact that Commonwealth did not increase its fuel charge to 6.7 cents per KWH in 1997. Commonwealth, however, has discounted tariffs currently in effect, such as Rate G-3 (ED) (the Large General Economic Development Rate). The witness for the Companies stated that Commonwealth has no intention of seeking recovery of the lost revenues that resulted from these discounted rates (Tr. 3, at 154). Because Commonwealth will not recover the lost revenues from other discounted rates but will later recover the fuel charge under-recovery, the Department finds that Commonwealth's use of a 6.5 cents per KWH fuel charge in 1997 was not a discount. Therefore, the Department finds that when Commonwealth calculates its 10 percent rate reduction, it shall use a fuel charge of 6.5 cents per KWH as a component of the baseline, August 1997 rates.[15]

The Act gives the Department the discretion to determine the "representative" 1997 rates from which the 10 percent rate reduction is calculated. There are two factors that go into determining what is a "representative" rate: (1) whether that rate was actually charged on customers' bills; and (2) whether that rate is subject to later reconciliation and recovery. According to the Stabilization Settlement, Commonwealth was allowed to charge a fuel charge of 6.7 cents per KWH in 1997. However, Commonwealth decided to maintain a fuel charge of 6.5 cents per KWH in 1997 and defer, for later recovery, the difference between the 6.5 and 6.7 cents per KWH fuel charge.

The Department differentiates its finding here from the Department's finding in Western Massachusetts Electric Company, D.T.E. 97-120 (1998), where we held that the rate actually charged was not representative. The charge at issue in D.T.E. 97-120 was a temporary credit on customers' bills during 1997 which was due to expire, coincidentally, on February 28, 1998 and was not subject to any kind of reconciliation and later recovery. The charge at issue in this proceeding, however, is subject to reconciliation and later recovery.

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15 During the proceedings, Commonwealth stated that it will have an over-recovery in its fuel charge account of approximately $10 million due to the proration of the fuel charge during the March billing cycle. Commonwealth requested that it be allowed to begin to return this money to ratepayers in the form of a credit on customers’ bills starting March 1, 1998. The Department rejected this request in a separate docket, D.T.E. 98-13, on February 20, 1998.

Indeed, Commonwealth has every intention and is entitled to recover the full amount of the under-recovery that resulted from its decision to charge 6.5 rather than 6.7 cents per KWH for the 1997 fuel charge. Therefore, the Department finds that the 6.5 cents is the rate representative of 1997 fuel charge rates from which the 10 percent discount should be calculated.

c. The Companies' Use of Deferrals

i. The Companies' Proposal

The Plan provides that some costs may be deferred from year to year to achieve or maintain the rate reductions that the Act requires. These deferrals could take several forms. If the Companies' actual transition costs during a given interval exceed the transition charges collected during that interval, the Companies will defer the difference for collection through a reconciliation account (Exh. CEC-1, Tab G at 7; Tab H at 9). During years in which the wholesale price of the standard offer exceeds the retail price, the Companies may defer the difference between the two if necessary to achieve a 10 percent reduction from rates in effect in August 1997.[16] If there is a balance remaining in the deferral accounts after the transition period, the Companies propose to recover those amounts at that time (RR-ECT-2). If the deferrals exceed the Companies' borrowing limits in a given year, the Companies would seek Department approval to immediately impose a surcharge to reduce the amount of deferrals below the borrowing limits (Exh. CEC-1, Tab D at 20-21; Exh. DTE-28).

ii. Positions of the Parties

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16 Such would be the case in 1998, during which the retail standard offer price is 2.8 cents per KWH and the stipulated maximum wholesale price is 3.2 cents per KWH.

Enron argues that the proposed deferrals are inconsistent with the Act; that the Act calls for rate reductions; and that "[a]s a matter of simple English, a reduction is not the same as a deferral" (Enron Brief at 9). Enron argues that a company that cannot achieve the required rate reductions without deferrals must invoke G.L. c. 164, § 1G(c), which states:

> If, after the submittal of a restructuring plan to the [D]epartment pursuant to section 1A, a distribution company claims that it is unable to meet a price reduction of 10 per cent…pursuant to subsection (a) of section 1A and subsection (b) it shall petition the [D]epartment to explore any and all possible mechanisms and options within the limits of the constitution which may be available to the [D]epartment to achieve compliance with the provisions of this section . . .

The Companies respond that the Act does not prohibit deferrals, which are a "well-established regulatory rate-making practice" (Companies Reply Brief at 19). They argue that Enron has confused rate reductions, which are required by the Act, with cost reductions, which are not (id.). Finally, the Companies argue that the Department should approve the use of deferrals here in order to avoid placing the Companies in a "confiscatory situation or extreme financial distress" (id.).

iii. Analysis and Findings

Deferrals are a well-established regulatory ratemaking practice, which the Act does not forbid. The Act, in fact, explicitly allows deferrals in the event the Department approves, after further legislation, the implementation of a comparability credit. St. 1997, c. 164, § 308. They are a reasonable mechanism for companies to provide the mandatory rate reductions during the transitional period of the standard offer while ensuring, to the extent practicable, that the companies recover costs to which they are entitled.

The Act is silent on the Company's rate structure beyond the seven-year transition period, and to interpret it as forbidding recovery after that time could lead to a confiscation of the Companies' property in violation of the fifth Amendment to the United States Constitution. Bluefield Water Works v. West Virginia 262 U.S. 679, 688 (1923) (prohibiting confiscatory ratemaking by entitling utilities to collect reasonable operating costs and providing an opportunity to earn a just and reasonable return on investment). The Act must be interpreted, if at all possible, so as not to render it contrary to the terms of the Constitution. Commonwealth v. S.S. Kresge Company, 267 Mass. 145, 148 (1929); Hayes v. City of Brockton, 313 Mass. 641, 645-646 (1943). In so interpreting the Act, the Department finds that the Companies cannot be precluded from collecting all of the reasonable costs incurred in providing standard offer service at the mandatory rate reductions, nor can they be precluded from recovering the transition costs explicitly allowed them by the Act. Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 605 (1944). This is so even if that recovery occurs after the transition period.

The Department finds further that the issue of what remedies may be available to the Companies should deferrals exceed borrowing limits is not yet ripe for decision. No party presented evidence that such a scenario is likely, taking into consideration the Department's findings with respect to standard offer pricing. The claim amounts to little more than ungrounded speculation. Further, the Companies' schedules for transition cost recovery exclude the residual value credit and further mitigation before divestiture, both of which would tend to decrease the level of the access charge, reducing the possibility of exceeding the Companies' borrowing limits during the transition period. The Department avoids, where possible, rendering advisory decisions on matters that have not matured into an actual controversy for resolution through the adjudicatory process. If and when a fact-based controversy arises, the Department will consider it in due course.

3. Unbundled Distribution Rates

a. The Plan

Cambridge and Commonwealth propose to base their unbundled distribution rates on updated COSS that use calendar year 1995 adjusted costs (Exh. CEC-1, Tab D at 13, 17). Therefore, the results of these 1995 COSS affect the total distribution revenues Cambridge and Commonwealth will collect from their distribution rates.

b. Positions of the Parties

The Attorney General states: "[g]iven the limited time frame for this case and the scope of the issues, a rate case type of analysis was not performed" (Attorney General Brief at 35). However, the Attorney General accepts the calculations of the unbundled rates for the limited purposes of establishing the level of costs necessary to open access and provide for the divestiture of the generation function (Attorney General Brief at 35). SORE, on the other hand, asserts that both Cambridge and Commonwealth have received excessive earnings during 1995 and, therefore, should file a more up-to-date COSS (SORE Brief at 5). The Companies state that they have not received excessive earnings during 1995 (Companies Brief at 48). Also, the Companies state that the Act is silent on the issue of revenue requirements and COSS in relation to restructuring filings and that a general rate case is beyond the scope of this proceeding (id.).

c. Analysis and Findings

Cambridge and Commonwealth determined their distribution rates based on updated COSS. The cost of service analyses used the method that the Department has approved for developing base rates. See Massachusetts Electric Company, D.P.U. 95-40 (1995); Cambridge Electric Light Company, D.P.U. 92-250 (1993); Commonwealth Electric Company, D.P.U. 90-331(1991). The Department traditionally has reviewed proposed changes to base rates by conducting a thorough review of the costs included in the COSS and the manner in which the costs were functionalized and allocated. A cost of service investigation typically takes six months to complete.

In this proceeding, the COSS is used only to develop the distribution costs, whereas, in a base rate proceeding the COSS is used to develop the customer, distribution, transmission, and generation costs. Consequently, the COSS in this proceeding has less of an impact on the total costs collected by the Companies than the COSS filed in a base rate proceeding has on total costs collected. Therefore, given the limited time to implement retail choice, the scope of this proceeding, the limited effect of the COSS on Cambridge's and Commonwealth's total costs, and the fact that the proposed rates are unbundled and provide a 10 percent discount as required by the Act, the Department finds Cambridge's and Commonwealth's proposed distribution costs to be appropriate for the purposes of this proceeding. However, the Department, in a future rate proceeding, will conduct a thorough review of the costs included in the distribution rates[17] and the manner in which the costs included in the COSS were

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[17] The Act gives the Department the authority to establish performance-based rates. St. 1997, c. 164, § 193 (G.L. c. 164, § 1E). The Department must determine the

functionalized and allocated. [18]

4. Bundled Charges

Cambridge and Commonwealth propose to bundle the distribution, DSM, renewables, and transition charges in the rate tariffs. The Act states that all electric bills sent to retail customers shall be unbundled to reflect separately the rates charged for generation, transmission, and distribution services, as well as any other charges, as added pursuant to any provision of law, contained in the total retail price. Any transition charge, if approved, shall be reflected separately on bills as of March 1, 1998. St. 1997, c.164, § 193 (G.L. c. 164, § 1D). Since the Act requires the distribution, DSM, renewables, and transition charges to be itemized separately on the bill, the Department directs Cambridge and Commonwealth to unbundle these charges in the tariffs.

The Department notes that the DSM-related provisions of the Act, as found in G.L. c. 25, § 19, pertain to utility-sponsored programs. In contrast, funding for the renewable energy projects authorized by G.L. c. 25, § 20 is administered by the Massachusetts Technology Park Corporation. To ensure that DSM and renewables funds are properly tracked, the Department finds it appropriate to require that they be separately tariffed.[19]

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appropriate "cast-off" rates before establishing performance-based rates. See, Boston Gas Company, D.P.U. 96-50 at 346-347 (1996). A thorough review of the COSS will be necessary to establish the appropriate "cast-off" rates.

18 The Department plans to conduct a generic proceeding on performance quality standards. After the conclusion of the performance quality standards proceeding, the Department plans to investigate each distribution company’s distribution rates when appropriate and then establish performance-based rates.

19 Consistent with this finding, Cambridge and Commonwealth are directed to modify their retail delivery tariffs to include a rate adjustment clause to specify the separate adjustment

St. 1997, c. 164, § 37 (G.L. c. 25, § 20(c)). Additionally, separate tariffs for DSM and renewables would further the intent of the Act that DSM and renewables charges are to be identified separately on customers' bills.[20] St. 1997, c. 164, § 37 (G.L. c. 25, § 20(a)(1)). Therefore, the Company is hereby directed to file separate DSM and renewables tariffs.

5. Negative Charges On Tariffs

Cambridge proposes a negative off-peak KWH distribution charge for rates R-5 and R-6 (Exh. CEC-1, Exh 1.B at 5, 6). If the transition charge remains bundled with the distribution charge, the total bundled charge is positive. Therefore, Cambridge maintains there is no problem with this proposal **(**Tr. 3, at 141**)**. However, in Section IV.B.4, above, the Department has directed Cambridge to unbundle the transition and distribution charges. Cambridge can eliminate the negative distribution charges by redesigning the R-5 and R-6 rates as follows: change the transition charge from being the same charge for the on-peak and off-peak periods to a charge that is higher for the on-peak period than it is for the off-peak period, but that overall collects that same amount of revenue as having a uniform charge (RR- DTE-33). Accordingly, the Department directs the Company to redesign the R-5 and R-6 rates to remove the negative distribution charges.

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components for the DSM charges and renewables charges.

20 The Department has directed the distribution companies, through meetings with our consumer division, to itemize these charges separately on customers' bills. The Department understands that such itemization may be delayed , but no longer than three months, while Cambridge and Commonwealth reprogram their computer systems to accommodate these additional changes.

6. Streetlight Rates

a. The Plan

Cambridge and Commonwealth propose streetlight rates that include an annual luminaire charge that bundles the distribution, transition, and, if applicable, fixture and maintenance costs (Exh. CEC-1, Exh. I.B at 15-27, and Exh. II.B at 18-46). Both Cambridge and Commonwealth state the transmission charge separately on the streetlight tariffs.

b. Positions of the Parties

i. The Compact

The Compact states that municipalities (1) have the right to purchase the streetlight equipment previously owned by the distribution company; (2) can obtain generation service from a competitive supplier, regardless of whether the distribution company or the municipality owns the lighting equipment; and (3) can convert electric service to an alternative tariff that provides rates for distribution-only service (Compact Brief at 36, citing St. 1997, c. 164, § 196 (G.L. c. 164, § 34A)). The Compact contends that the Companies' Plan is silent on how they intend to comply with the streetlight provisions in the Act. Lastly, the Compact points out that the Companies did not propose an alternative tariff for municipalities that acquire the Companies' streetlight fixtures and, therefore, wish to receive distribution-only service (id.). Accordingly, the Compact states that the Companies should be directed to implement the provisions of Section 196 of the Act and propose an alternative tariff with that provision in mind (id. at 37).

ii. The Companies

The Companies state that the Act does not require any municipal streetlight proposal to be filed with the Plan (Companies Brief at 46). Instead, according to the Companies, the Act presumes that distribution companies and any interested municipality will negotiate the purchase of streetlight equipment and related matters as set forth in the Act (id.). The Companies maintain that such negotiations will likely occur on a case-by-case basis and do not require any specific submittal as part of this case (id.). The Companies maintain that they are willing to negotiate potential streetlight acquisitions with any interested municipality and, consequently, the Compact's request for more specific information as part of the Plan should be rejected (id.).

c. Analysis and Findings

With respect to the Compact's argument that more specific information is needed as part of the Plan, the Department agrees with the Companies that the Act does not require the filing of any municipal streetlight proposal with the Plan. If a municipality is interested in taking actions allowed by Section 196 of the Act, the Companies' Plan does not prohibit such actions. However, the Act requires bills to be unbundled to separately reflect the rates charged for generation, transmission, transition, and distribution services, as well as any other charges, as added pursuant to any provision of law. St. 1997, c. 164, § 193 (G.L. c. 164, § 1D). Therefore, the Department directs Cambridge and Commonwealth to separate the DSM charge, renewables charge, and transition charge from the luminaire charge on the streetlight tariffs.[21]

With respect to the language on the proposed streetlight tariffs, Cambridge and Commonwealth did not state that customers on the streetlight rates are subject to the DSM charge, renewables charge, transition cost adjustment and the transmission cost adjustment. Also, Cambridge and Commonwealth did not state that standard offer service and default service are available to customers on the streetlight rates. The Department directs Cambridge and Commonwealth to disclose on the streetlight tariffs that customers are subject to the DSM charge, renewables charge, and transition cost adjustment and to state the availability of standard offer service and default service on the streetlight tariffs.

7. Tariff Provisions

Section 315 of the Act requires distribution companies to offer a 10 percent discount to customers engaged in the business of agriculture or farming. Cambridge and Commonwealth did not include this discount in the Plan. However, during the proceedings, Cambridge and Commonwealth indicated that they would include appropriate language in their compliance filings (Exh. DTE-37). Accordingly, the Department directs Cambridge and Commonwealth to revise their retail tariffs by including the farm discount.

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[21] The rate reductions required by the Act should be reflected in the streetlight tariffs. However, municipalities that choose, pursuant to Section 196 of the Act, to purchase streetlights and then convert to an alternative tariff may fall outside the rate reduction requirements of the Act.

Cambridge's and Commonwealth's residential tariffs state that a customer must give a minimum of four days' notice to terminate service. The Department's Model Terms and Conditions for Distribution Service, D.P.U./D.T.E. 97-65 at Section II.6C, state that a customer must give at least three business days' notice to terminate service. Accordingly, Cambridge and Commonwealth are directed to revise their residential tariffs to comply with Section II.6C of the Model Terms and Conditions for Distribution Service.

With respect to Cambridge's and Commonwealth's proposal to cancel the fuel charge, conservation charge and energy conservation service charge on March 1, 1998, the Department finds the following. In D.T.E. 98-13 we stated: "[t]he Department finds that the opening of the Massachusetts market to competition starting March 1, 1998 negates the need for the fuel charge requirements of G.L. c. 164, §§ 94G and 94G1/2." Id. at 4. Therefore, the Department finds it appropriate to terminate the fuel charge tariff for consumption on or after March 1, 1998. In addition, the Act replaces the conservation charge and energy conservation service charge with the DSM charge. Accordingly, it is appropriate for Cambridge and Commonwealth to terminate their conservation charge and energy conservation service charge for consumption on or after March 1, 1998.

Lastly, the Department makes no findings in this proceeding with respect to Cambridge's and Commonwealth's proposed terms and conditions tariffs, default service tariff, and standard offer tariff. Instead, the Department defers its review of these tariffs to the Model Terms and Conditions proceeding, D.P.U/D.T.E. 97-65.

8. Notification Period for Self-Generation

a. Introduction

The Act states that utility companies and the Department shall not require a customer to give more than six-months' notice of plans to install on-site generation or cogeneration facilities. St. 1997, c. 164, § 193 (G.L. c. 164, § 1G). Cambridge and Commonwealth filed proposed tariffs for general service that include a two-year notification period for customers who are planning to self-generate (Exh. CEC-1, Tab E; Exh. CEC-1, Tab F).

b. Positions of the Parties

i. The Compact

The Compact states that there is a discrepancy between the Act and the Companies' filing (Compact Brief at 33, citing Tr. 5, at 34-37). The Compact argues that the proposed two-year notification period erects unreasonable and unauthorized barriers to on-site generation (id. at 33-34).

ii. The Companies

The Companies acknowledge the discrepancy between their original filing and the Act regarding the notification period for self-generation contained within their general service tariffs (Companies Brief at 56-57). The Companies indicate that they will revise the filing so that the notification period for self-generation is reduced to six months for general service tariffs (id.).

c. Analysis and Findings

The Department notes that Cambridge and Commonwealth have already agreed to revise their tariffs in order to comply with the Act. Nevertheless, the Department directs Cambridge and Commonwealth to revise their general service tariffs by reducing the notification period for self-generation from two years to six months. In addition, in order to comply with the Department's rules, net metering customers shall be exempt from this notification requirement. 220 C.M.R. § 11.04(7)(c).

9. Commonwealth's Notification Period for Termination of G-2 and G-3 Service

a. Introduction

Commonwealth filed proposed Medium General Time-of-Use ("G-2") and Large General Time-of-Use ("G-3") tariffs that required customers to provide a 24-month written notice before service would be terminated by Commonwealth (Exh. CEC-1, Tab F, Proposed M.D.P.U No. 345, at 4; Exh. CEC-1, Tab F, Proposed M.D.P.U. No. 346, at 4). Cambridge filed proposed G-2 and G-3 tariffs that require a six-month written notification period for termination of service (Exh. CEC-1, Tab E, Proposed M.D.P.U. No. 595, at 4; Exh. CEC-1, Tab E, Proposed M.D.P.U. No. 596, at 3).[22]

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[22] The same written notification provisions are in place on Cambridge's and Commonwealth's current tariffs. Cambridge's current G-2 and G-3 tariffs (M.D.P.U. 535B and M.D.P.U. 536B, respectively) have an effective date of June 1, 1993. Commonwealth's current G-2 and G-3 tariffs (M.D.P.U. 295 and M.D.P.U. 296, respectively) have an effective date of May 1, 1995.

b. Positions of the Parties

SORE states that there is a difference in the notification provision between Cambridge and Commonwealth (SORE Brief at 11). SORE maintains that there is no explanation in the Companies' petition for the different notification provisions contained in Cambridge's and Commonwealth's general service tariffs (id.). SORE argues that if the six-month term contained in Cambridge's G-2 and G-3 tariffs is acceptable to the Department, then the same notification period should be applied to Commonwealth's G-2 and G-3 tariffs (id.). The Companies did not address this issue on brief.

c. Analysis and Findings

The Act requires a six-month notification period for customers who choose to self-generate.[23] In the event that a Commonwealth customer being served under the G-2 or G-3 tariff decides to self-generate, this customer could be obligated to pay the minimum monthly charges under the G-2 or G-3 tariff for up to 18 months after it commences self-generation. The Department finds that the discrepancy in Commonwealth's G-2 and G-3 tariffs between the notification period for self-generation and the notification period for termination of service is without justification and is, therefore, unreasonable. Accordingly, the Department directs Commonwealth to revise its G-2, Medium General Time-of-Use tariff, and its G-3, Large General Time-of-Use tariff, by reducing the written notification period for termination of service from 24 months to six months.

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23 Customers who are eligible for net metering service are exempt from this notification requirement.

C. Special Rates

1. Low-Income Tariffs

The Act sets forth the low-income eligibility requirements to be used by all distribution companies in the Commonwealth. St. 1997 c. 164, § 193 (G.L. c. 164, § 1F(4)(i)). In accordance with the Act Cambridge and Commonwealth are directed to modify their low-income tariffs by replacing the eligibility criteria with the following language:

> Electric delivery service under this rate is available upon verification of a customer’s eligibility for the low-income home energy assistance program, or its successor program, or verification of a customer's receipt of any means tested public benefit, for which eligibility does not exceed 175 percent of the federal poverty level based on a household’s gross income, or other criteria approved by the Department.

In addition, the Act requires all distribution companies to guarantee payment to competitive suppliers for all power sold pursuant to the low-income tariffs. St. 1997 c. 164, § 193 (G.L. c. 164, § 1F(4)(i)). Therefore, the Department directs Cambridge and Commonwealth to add the following language to their low-income tariffs:

> The Company will guarantee the customer’s payment to its designated supplier up to the prices that the Company charges to customers for standard service.

With respect to outreach, the LII state that the Companies have not included a substantial outreach proposal as a part of their Plan and claim that an outreach proposal is needed because Cambridge’s and Commonwealth’s outreach efforts need much improvement (LII Brief at 1-2). The Companies maintain that the LII's criticisms of their outreach efforts are without foundation (Companies Reply Brief at 51).

The Department finds that although the Act requires distribution companies to pursue efforts to make the low-income discount available to eligible customers, the Act directs DOER to monitor such activities and requires each distribution company to report annually to DOER. While there is nothing in the Plan that describes the Companies' outreach efforts, the Department expects the Companies to make such efforts and to file reports with DOER, in accordance with the Act. Therefore, the Plan substantially complies with the Act. See D.P.U./D.T.E. 96-23, at 67 (1998).

2. Termination of Discount Tariffs

a. Introduction

The Act states that the 10 percent rate reduction shall be applied against undiscounted rates in effect during August 1997 or such other date as the Department may determine to be representative of 1997 rates. St. 1997, c. 164, § 193 (G.L. c. 164, § 1A).

Commonwealth proposes to eliminate its discount tariffs, which include the Large General Economic Development Rider, Large General Economic Development Rate (Closed), Service Extension Discount Rider, Vacant Space Rider and Retail Choice Pilot Program ("Economic Development Tariffs"), as of March 1, 1998 (Exh. CEC-1, Tab D at 16). Customers currently receiving service under these discounted tariffs will receive a 10 percent rate reduction based on Commonwealth's current G-2 or G-3 rates (id. at 17). Cambridge does not currently have any discount tariffs in place (AG-RR-14).

b. Positions of the Parties

i. Acushnet Rubber Company, Inc.

Acushnet states that Commonwealth's economic development rates were formulated to help New Bedford industrial manufacturers compete (Acushnet Comments at 1). Acushnet claims that Commonwealth's use of the G-3 tariff as the baseline for calculating the 10 percent rate reduction will result in rate increases for customers currently on economic development rates (id.). In addition, Acushnet asserts that the impact of this rate increase will be to diminish New Bedford's industrial customers' ability to secure business and retain jobs (id.).

ii. SORE

SORE argues that Commonwealth is using an inflated baseline for calculating the 10 percent rate reduction (SORE Brief at 3). As a result, SORE claims that many of its members will not realize a 10 percent reduction from their August 1997 rates and will, therefore, experience an economic disadvantage relative to other Massachusetts industrial customers (id.). SORE objects to Commonwealth's proposal to eliminate the discounted tariffs and urges the Department to consider the merits of each tariff and the impact on companies now taking service under these rates (id.). In addition, SORE recommends that Commonwealth and the Department consider using a discounted baseline or a hybrid baseline beginning March 1, 1998 to calculate the 10 percent rate reduction in order to help mitigate additional economic disadvantage to New Bedford area industrial customers (id. at 4). SORE also argues that the Retail Choice Pilot Program tariff is not a discounted rate (id.).

iii. The Companies

The Companies maintain that since the Act provides for a 10 percent rate reduction from undiscounted rates, the Legislature did not intend to institutionalize price discounts as part of the development of the 10 percent rate reduction (Companies Reply Brief at 47). Because the Economic Development Tariffs are discounted rates, the Companies recommend that the Department reject SORE's request that the Department use a discount or hybrid baseline rate for industrial customers in the Companies' service territories against which the 10 percent rate reduction mandated by the Act would apply. The Companies state that SORE's proprosed modification would be inconsistent with the Act's requirement of a 10 percent rate reduction from undiscounted rates (id.). In addition, the Companies state that the fundamental premise of the Act is to allow each class of customer the opportunity to bargain with electricity providers to receive the lowest possible rate for electricity (id.).

c. Analysis and Findings

The Act states that utilities must provide a 10 percent discount from "undiscounted" rates that were in effect in August 1997, or some other period that the Department determines to be representative of 1997 rates. Commonwealth's current Economic Development Tariffs are non-cost-based rates since they are discounts from cost-based tariffs. Commonwealth's current Economic Development Tariffs are also not subject to deferred recovery. For these reasons, the Department finds that Commonwealth's current Economic Development Tariffs are discounted rates. Accordingly, the Department finds further that Commonwealth has properly used the G-2 and G-3 tariffs as the baseline for the calculation of the 10 percent rate reduction for customers currently served under the Economic Development Tariffs.

The Department is aware that parts of Commonwealth's service territory would benefit from the economic stimulus of lower electric rates and that discounted tariffs and special contracts may help keep certain business operations viable. One of the primary objectives of offering retail choice to electricity consumers of Massachusetts is to give them more options for meeting their energy needs. Retail choice will provide consumers with the opportunity to choose to purchased power from a competitive supplier or remain with their incumbent electric utility through standard offer service. The Department encourages the Companies to pursue all necessary solutions to meet the energy needs of their customers. The Department has been supportive of electric company Economic Development Tariffs in the past and believes that properly designed economic development rates can be provided to customers by distribution companies in the future.[24] Commonwealth Electric Company, D.P.U. 93-41, at 20 (1993).

3. Interruptible Rates

Cambridge and Commonwealth proposed to discontinue interruptible service tariffs (Exh. CEC-1, at 16, 18). According to the Attorney General, the interruptible rates are cost-based and do not represent a discount as such, but rather compensation for avoided marginal capacity and transmission costs (Attorney General Brief at 31, citing Commonwealth Electric Company, D.P.U. 89-114/90-331/91-80, at 308 (1991); Cambridge Electric Light Company, D.P.U. 89-109, at 111 (1989); Commonwealth Electric Company, D.P.U. 88-135/151, at 226-227 (1989)). Therefore, the Attorney General states that Cambridge and Commonwealth

[24] The Department has stated that a discount to one customer is not recoverable from remaining ratepayers. Massachusetts Electric Company, D.P.U. 95-40, at 142-143 (1995).

should continue their interruptible rates for those customers who remain on standard offer service, since the benefit of having interruptible load would flow to the entity that serves the load (id. at 31-32).

The Companies state that they have reviewed their policy and have determined that other distribution companies such as Massachusetts Electric Company are continuing the interruptible service tariffs (Companies Brief at 51). Accordingly, like Massachusetts Electric Company, Cambridge and Commonwealth propose to revise their Plan to offer existing interruptible credits through the year 2000 to any customer currently receiving credits as long as the customer continues to take standard offer service (id.). Since the interruptible credits are cost-based and Cambridge and Commonwealth agree to continue them, the Department directs Cambridge and Commonwealth to revise their Plan to offer existing interruptible credits through the year 2000 to any customer currently receiving credits as long as the customer continues to take standard offer service.

D. Transition Costs

1. Introduction

The Act defines four principal types of transition costs: (1) the depreciated book value of owned generating plant that cannot be recovered at market prices; (2) the amount by which obligations under power purchase agreements ("PPAs") exceed the amount the same energy and capacity could be bought or sold for in the competitive market ("above-market" PPA costs), including buyout and buydown payments[25] for liquidating above-market PPAs; (3) the

25 Such payments can also be viewed as mitigation of transition costs, when considered together with reductions in minimum payments under PPAs.

as-yet unamortized generation-related Department-approved regulatory assets; and (4) post-shutdown nuclear costs. St. 1997, c.164, § 193 (G.L. c. 164, § 1G(b)(1)). The Act allows three other types of transition costs: (1) employee-related transition costs such as severance pay and employee retraining; (2) property taxes or payments in lieu of property taxes; and (3) removal and decommissioning costs for certain fossil-fueled generation. Id., (G.L. c. 164, § 1G(b)(2)). The Act recognizes several types of mitigation to reduce transition costs and overall rates: (1) sale of generating plant; (2) renegotiation of PPAs to decrease the buyer's obligations; (3) netting above-market generating assets against below-market ones; (4) analysis of PPA performance; and (5) any other reasonable and effective mitigation mechanisms. Id., (G.L. c. 164, § 1G(d)(1)).

According to the Plan, the present value of Commonwealth's estimated transition costs amounts to $940 million in the base case, in which no mitigation occurs[26] (Exh. CEC-1, Exh. IV, Sch. 1, at 1, 9). The corresponding amount for Cambridge is $150 million in the base case[27] (id., Exh. III, Sch. 1, at 1, 9)

2. Categories and Amounts of Transition Costs

a. Overview of the Plan

The Plan's estimated transition costs include both fixed and variable costs (id., Exh. III at 1-13, Exh. IV at 1-15). In the base case, fixed costs represent almost nine percent of Commonwealth's estimated transition costs and 11 percent of Cambridge's estimated transition

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26 The calculation uses Commonwealth's proposed discount rate of 13.51 percent.

27 The calculation uses Cambridge's proposed discount rate of 12.69 percent.

costs (id., Exh. III, Sch. 1, at 1, Exh. IV, Sch. 1, at 1). The book value of generating plant is $33 million for Commonwealth and $16.5 million for Cambridge (id., Exh. III, Sch. 1, at 5, Exh. IV, Sch. 1, at 5). The remaining fixed transition costs are regulatory assets, including $50 million for Commonwealth and negative $0.3 million for Cambridge (id., Exh. III, Sch. 1, at 6, Exh. IV, Sch. 1, at 6).

Estimated above-market costs of PPAs under which Commonwealth buys power account for 89 percent of its estimated variable transition costs in the base case, or about 81 percent of its total transition costs (id., Exh. IV, Sch. 1, at 1, 3). The corresponding PPA numbers for Cambridge are 62 percent of variable transition costs and 55 percent of total transition costs (id., Exh. III, Sch. 1, at 1, 3). For Commonwealth, the remainder of the variable transition costs is divided almost evenly between estimated nuclear decommissioning costs and transmission in support of remote generation (with each being 4 to 5 percent of total transition costs), with a very small amount for above-market fuel transportation (id., Exh. IV, Sch. 1, at 3). For Cambridge, estimated decommissioning costs account for 61 percent of remaining variable transition costs, or 28 percent of total transition costs; most of the remainder (about 5 percent of total transition costs) is for transmission in support of remote generation, again with a very small amount for above-market fuel transportation (id., Exh. III, Sch. 1, at 3). The dollar amounts of four types of transition costs are yet to be determined: PPA buyouts, payments in lieu of property taxes, employee severance and retraining, and damage claims (id., Exh. III, Sch. 1, at 3, Exh. IV, Sch. 1, at 3).

The Companies propose to collect their transition costs in an access charge over 12 years for fixed charges and over the lives of the obligations for the variable charges (id., Exh. III, Sch. 1, at 1-3, Exh. IV, Sch. 1, at 1-3). For Commonwealth, the Plan caps the access charge at 4.26 cents per KWH for three years, after which it falls to 3.74 cents (id., Exh. IV, Sch. 1, at 1).[28] In the base case (i.e., before mitigation), the access charge falls slowly from 3.74 cents in 2001 to 1.12 cents in 2016 and vanishes in 2027 (id., Exh. IV, Sch. 1, at 1). For Cambridge, the access charge is set at 2.73 cents in 1998 and 1.88 cents in 1999, falls in the base case to 1.43 cents in 2007 and 0.45 cents in 2009, and vanishes in 2027 (id., Exh. III, Sch. 1, at 1).

b. Positions of the Parties

i. The Attorney General

The Attorney General contends that the Companies have improperly included in the access charge several costs pertaining to generating facilities and regulatory assets (Attorney General Brief at 11-24). In addition, the Attorney General contends that the Companies are proposing a different carrying charge for certain regulatory assets in this case than was allowed by the Department when those regulatory assets were created (id. at 17-18, 24).

The Attorney General argues that the Companies have improperly treated five costs for generating units (id. at 12-16). First, he claims, the Companies should treat their entitlements in nuclear units as ownership interests rather than PPAs, since other companies with approved restructuring plans did so (id. at 12). He argues that the Companies should recover only net,

28 To maintain the access charge at the cap for 1998-2000, Commonwealth accelerates amortization of fixed transition costs initially (Exh. CEC-1, Exh. 1, Sch. 1, at 2). During 2001-2009, fixed transition costs are amortized in equal amounts, resulting in a declining return of fixed assets and most of the decline in the overall access charge (id.).

prudent costs committed as of December 31, 1995, with carrying costs at the mitigation incentive rate, and 80 percent of the "to go" results[29] (id. at 12-13). Second, the Attorney General maintains that the retail companies should be denied recovery of prepayments for operations and maintenance ("O&M") expenses at Seabrook 1, since these short-term costs should be collected through an adjustment to working capital (id. at 13-14). Third, the Attorney General contends that the current balances of nuclear core costs should not be recovered at this time, since they are not stranded until a reactor is retired and may be fully mitigated by salvage value in any event (id. at 14). Fourth, he argues that capital additions after 1995 should not be included in transition costs until the Companies have demonstrated directly and individually that they were actually committed before 1996 (id. at 15). Fifth, he urges that the Department credit all sales of Company property since the last base rate case as mitigation to reduce the initial balance of stranded generation plant investment included in the transition charge calculation (id. at 15-16).

The Attorney General claims that the Companies have inappropriately treated various regulatory assets in eight ways (id. at 16-24). First, he contends that Commonwealth has miscalculated the current balance connected with the litigation of past outage costs for the Pilgrim nuclear power plant ("Pilgrim") and is claiming a rate of return on this regulatory asset higher than that allowed in the Department's Order creating it (id. at 16-18). Second, he argues that Commonwealth similarly claims a rate of return on the Pepperell and Tenaska PPA buyouts higher than that allowed in the Department's authorizing Order (id. at 18). Third, he

29 The "to go" results are the income from selling the plant's output, less the plant's variable costs.

maintains that Commonwealth proposes to charge ratepayers twice for the abandoned Cannon Street plant, by claiming as a regulatory asset money that has been collected in base rates as depreciation expense since 1991 (id. at 19-20). Fourth, he claims that the modest asbestos removal costs at Cannon Street which were incurred several years ago should not now be included as regulatory assets, because (1) they should have been expensed in the first place; (2) retroactive ratemaking should not be allowed; and (3) Commonwealth's earnings were more than adequate to cover this pre-test-year expense, when test year rates were adequate to absorb such expenses (id. at 20-22). Fifth, he claims there are problems with the treatment of debt issuance expenses (id. at 22). (These issues are discussed in greater depth in Section VI.D.9.) Sixth, he argues that the ratemaking treatment of deferred fuel costs should be determined in the Department's generic docket on the subject, instead of immediately treating these costs as a regulatory asset (id. at 22-23). Seventh, he contends that the final balances for DSM activities should be trued up through the established DSM mechanisms, with their specific carrying charge rate, rather than treated as a regulatory asset and recovered through the transition charge (id. at 23). Eighth, he claims that the carrying charges on pensions and post-retirement benefit costs other than pensions ("PBOPs") should be the actuarially determined rate rather than the rate proposed by the Companies (id. at 24).

ii. The Companies

The Companies address the Attorney General's claims in turn (Companies Reply Brief at 29-39). For generation costs, the Companies first state that the nuclear entitlements are FERC-approved contracts, arguing that treating the entitlements as ownership would change the timing but not the amounts recovered, and claiming that nothing in the Act requires sharing of "to go" results between shareholders and ratepayers (id. at 29-30). Second, the Companies contend that disallowance of prepaid O&M expenses would be disallowance of prudently incurred costs under a FERC-approved contract (id. at 31). Third, the Companies maintain that nuclear fuel cores are on Canal's books and that any future salvage value can be reflected in future mitigation reconciliations (id. at 32). Fourth, the Companies argue that they presented substantial evidence supporting capital additions made after 1995 and that these costs will be subject to later audit and reconciliation (id. at 32-33). Fifth, they claim to agree with the Attorney General and state that sales of surplus transmission and distribution land will be reflected as mitigation in future proceedings (id. at 33).

Regarding regulatory assets, the Companies first address the Pilgrim litigation costs, contending that the dollar difference in question is an appropriate update to an earlier estimate and that it is appropriate to apply the transition cost carrying charge to all regulatory assets, including Pilgrim litigation costs (id. at 33-34). Second, the Companies argue likewise that the transition cost carrying charge should apply to all regulatory assets, including the Tenaska and Pepperell PPA buyouts (id. at 34). Third, the Companies maintain that Cannon Street depreciation was discontinued, the reference to inclusion in base rates since 1991 is misleading, and the Attorney General's proposed treatment of Cannon Street would require corresponding additions to rate base of many other expenses (id. at 35). Fourth, the Companies claim that the Cannon Street asbestos removal cost was approved by FERC after a thorough review and without objection by the Department (id. at 36). Fifth, the Companies' response to the Attorney General's proposed treatment of debt issuance costs is discussed in Section VI.D.9., below. Sixth, the Companies contend that the fuel cost adjustment amount is large and must be spread over several years to avoid increasing rates when they are supposed to decrease, a result that will be achieved by treating them as a transition cost but may not be achieved in the Department's generic docket on the subject (id. at 37). Seventh, the Companies maintain that it is best to treat the DSM balance as a regulatory asset because the conservation charge ends on the retail access date (id. at 38). Eighth, the Companies argue again that the carrying charge on regulatory assets should be a single rate once accounts are moved from rate-case recovery to transition-cost recovery, including in this case pensions and PBOPs (id. at 38-39).

c. Analysis and Findings

The Act specifies the types of transition costs that a company may recover in an access charge. St. 1997, c. 164, § 193 (G.L. c. 164, § 1G(b)). Based on its review, the Department finds that in general the types of transition costs claimed by the Companies are those types for which the law allows recovery. The verification of the exact amounts awaits a more comprehensive audit, which the Department must complete for the Companies by March 1, 2000. Id., (G.L. c. 164, §§ 1A(a), 1G(a)(1)).

However, the Attorney General has raised many issues about appropriate treatment of particular items that the Companies have proposed for inclusion as transition costs, with the same carrying charge rate for them all, which in some cases would alter the carrying charge rates allowed by the Department in previous orders. Full audit and investigation of these issues by the Department would require more time than is available before the Department must issue an order allowing retail access to begin for the Companies' customers. The amounts involved are all subject to audit and reconciliation. Accordingly, the Department will defer making findings at this time and determine the appropriate treatment of these proposed transition costs in the first case reconciling actual transition costs to estimated transition costs.[30] In the meantime, the Department will allow the Companies to charge these contested amounts provisionally as transition costs, subject to refund with interest at the Companies' proposed transition carrying charge rates or such other rates as the Department may determine in that proceeding.

3. Mitigation

a. Overview of the Plan

The Plan states that the Companies have offered their generating plants for sale and that bidding is currently under way (Exh. CEC-1, at 5, 21-23).[31] The Companies add that first-round bids were received in December 1997 and a short list of bidders are currently engaged in due diligence efforts before their expected submission of final, binding bids in March 1998 (Exh. ECT-10). The Companies state that the proceeds of the sale will be used to reduce, or mitigate, the amount of transition costs and in turn reduce the access charge, via a residual value credit[32] (Exh. CEC-1, Exh. III, Sch. 1, at 2, Exh. IV, Sch. 1, at 2; Companies Brief

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30 The Department will also require any refunds due to customers as a result of findings in the Companies' generating unit performance review cases to flow through the transition charge mechanism, since they would stem from the operation of generating plants, the source of transition costs.

31 As discussed above, the Companies plan to backstop their standard offer service obligations at pre-determined prices as part of their divestiture of generation resources (Exh. CEC-1, at 30).

32 As discussed above in Section VI.A., the Companies propose that to the extent the access charges fall below their respective caps, standard offer charges may increase to cover any loss the Companies incur from selling standard offer power below the price at which they procure it (Exh. CEC-1, at 34).

at 40).

The Companies are also in the process of auctioning off the entitlements to electricity under their PPAs, offering several groups of PPAs, in the same general time frame as the divestiture auction (Exh. CEC-1, at 22-26; Companies Brief at 39-40). The Companies are requiring bidders to bid a fixed price stream that the Companies would pay (or receive from) winning bidders to take over the Companies' responsibilities under the PPA entitlements, thereby converting variable transition costs to fixed transition costs (id.). The Plan provides that PPA buyout expenses be entered into an annual reconciliation account that becomes active after 1998 for Cambridge and 2000 for Commonwealth (Exh. CEC-1, Exh. III, at 8, Exh. IV, at 9). Until the Department approves the results of the Companies' PPA auction, the PPAs' above-market costs will flow through the access charge to their customers, as adjusted by the reconciliation account (id., Exh. III, Sch. 1, at 1-3, Exh. IV, Sch. 1, at 1-3).

In addition, the Companies are selling their sulfur dioxide and nitrogen oxide allowances to mitigate transition costs (id. at 26). Moreover, to further reduce transition costs, the Companies are selling, leasing, or otherwise finding value from real estate the Companies no longer need, leasing space in the distribution network and on transmission and communications towers, and releasing right-of-way easements where they are no longer needed (id. at 27).

b. Analysis and Findings

The Act requires that companies take all reasonable steps to mitigate their transition costs and encourages them to divest their generating assets. St. 1997, c. 164, § 193 (G.L. c. 164, §§ 1A, 1G). The Act further provides that the Department may allow a distribution company to recover its transition costs if it will divest its generating assets, mitigate its transition costs, and comply with the other important provisions of the Act. Id., (G.L. c. 164, § 1G(b)(1)). Based on our review of the record in this case, the Department finds that the Companies have committed to full mitigation of their transition costs, principally by auctioning off their PPAs and generating plants. Therefore, the Plan complies with the Act on this point. After the Companies submit the results of their generation asset auctions for review, the Department will determine in a separate proceeding whether they have indeed maximized the level of mitigation as required by the Act. Id., (G.L. c. 164, § 1G(d)(1)).

Nevertheless, the Department finds that the Companies' proposal for the reconciliation account requires a modification. Given the potential for large differences between estimated and actual transition costs due to variations in the market price for electricity and other factors, the Department directs Commonwealth to make its reconciliation account active on the same date the Plan proposes for Cambridge, January 1, 1999.

Finally, the Act requires a total rate reduction of 15 percent by September 1, 1999. Id., (G.L. c. 164, § 1B(b)). Based on our review of the record in this case, the Department finds that the Companies' mitigation plan shows potential to achieve such a rate reduction by the required date, and therefore that the Plan substantially complies with the Act on this point. The Department will review the results of the Companies' mitigation efforts to determine whether in fact they will result in the required rate reduction by the required date, or whether other measures specified in the Act will also be required.

In light of the above considerations, and noting that the Companies' mitigation efforts are already well under way, pursuant to St. 1997, c. 164, § 193 (G.L. c. 164, § 1G(b)(1)), the

Department hereby authorizes the Companies to collect an access charge for net, non-mitigable past investments that are classified as transition costs, subject to reconciliation, based on the rates proposed in the Companies' Plan, as modified in accordance with the directives in this Order.

4. Depreciation Rate for Fixed Generation Assets

a. The Companies' Proposal

The Companies propose to depreciate the as-yet undepreciated cost of their fixed generating assets and regulatory assets over a 12-year period, ending in 2009 (Exh. CEC-1, Exh. III, Sch. 1, at 2, Exh. IV, Sch. 1, at 2). The Companies propose to accelerate the depreciation, relative to the straight-line depreciation method[33] historically employed for ratemaking purposes, for the first three years of the transition period for Commonwealth and for the first year for Cambridge (id.). The Companies propose to accelerate the depreciation in order to obtain a rate reduction, during the first year of the transition period, equal to the minimum 10 percent required by the Act (Exh. DTE-8). Commonwealth proposes to continue accelerated depreciation for two more years, thus maintaining the access charge at its proposed cap, before switching to straight-line depreciation[34] (id.). Cambridge, on the other hand, proposed straight-line depreciation of the remaining fixed transition costs after the first year, resulting in larger rate decreases after the

33 The Department has historically allowed companies to depreciate their fixed assets at a fixed rate, known as straight-line depreciation.

34 The Companies assert that they retain the flexibility to allocate the residual value credit differently, which affects the fixed access charge, if appropriate, to achieve stable and declining rates (Exh. DTE-1-41).

first year (id.; Exh. CEC-1, Exh. III, Sch. 1, at 2).

b. Analysis and Findings

As stated above in Section VI.B.2., Commonwealth calculated its rate reduction by using a base "rate," including a particular fuel charge, that was never in effect. The Department has rejected this calculation and directed Commonwealth to use the fuel charge that was in effect for the entire year of 1997. Using the Department-ordered fuel charge rate results in the proposed depreciation schedule for fixed assets not yielding the 10 percent rate cut required by the Act. Accordingly, the Department directs Commonwealth to revise the initial depreciation of its fixed assets to provide a rate reduction of at least 10 percent.

When the Companies file their proposal to reduce the access charge pursuant to the results of their mitigation efforts, the Department directs the Companies to propose revised schedules for depreciation and/or the residual value credit that provide a stable and declining access charge.

5. Mitigation Incentive

a. The Companies' Proposal

The Companies' proposed mitigation incentives are based on reducing the cumulative average access charge below their proposed access charge caps (Exh. CEC-1, Exh. III, Sch. 1, at 4, Exh. IV, Sch. 1, at 4). Commonwealth would receive an incentive for reducing the average access charge below 4.26 cents per KWH, while Cambridge would receive an incentive for reducing the average access charge below 2.73 cents per KWH, calculated according to a table in the Plan (id.). In the base case, in which no mitigation occurs, Commonwealth would receive $1.25 million in incentives while Cambridge would receive

$0.73 million (id.). Commonwealth would receive the maximum incentive of $2.04 million for reducing the cumulative average access charge to 3.06 cents per KWH, while Cambridge would receive the maximum incentive of $0.89 million for reducing the cumulative average access charge to 1.20 cents per KWH (id.). Neither company would receive any additional incentive for reducing the access charge further (id.).

b. Positions of the Parties

Enron and the Compact contend that the Companies' proposed mitigation incentive is inconsistent with the Act (Enron Brief at 12; Compact Brief at 23-26). They argue that the Companies should not be allowed an incentive for taking actions required by the Act, namely mitigation of transition costs to the maximum extent possible (id.). The Compact adds that an incentive payment could violate the Act's requirement that all of the net proceeds from divestiture go to reduce the access charge (Compact Brief at 24-25).[35]

Enron and the Compact observe that, under the proposal, the Companies could receive incentive payments for something that is beyond the Companies' influence, such as an increase in market prices above their forecast (id. at 25; Enron Brief at 12). The Compact further observes that Commonwealth will receive an incentive under its proposal simply for charging transition costs at the level currently forecasted (id. at 25). The Compact urges that any incentive mechanism approved by the Department reward the Companies only for exceptional results, such as mitigation above some floor level (id. at 26).

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35 The Compact recognizes the Department's discretion to adjust the proceeds from divestiture, to the extent such adjustments inure to the benefit of ratepayers (Compact Brief at 25, n.17, citing G.L. c. 164, § 1A(b)(3)).

The Companies note that the structure of their proposed incentive mechanism is almost identical to those approved by the Department as parts of settled restructuring plans (Companies Brief at 45). The Companies contend that their proposed incentive will motivate them to mitigate their transition costs aggressively to the fullest extent possible, which will inure to the benefit of ratepayers (id. at 46). They add that the incentive mechanism provides the overwhelming majority of the mitigation benefits to ratepayers (id.). The Companies contend that the Department has used incentives in the past to motivate utility companies to act in the best interest of customers by aligning the financial interests of shareholders and customers (id., citing, e.g., Incentive Regulation for Electric and Gas Companies, D.P.U. 94-158, at 47-51, 53, 56 (1995)).

c. Analysis and Findings

The Act provides that all proceeds from divestiture, less any adjustments approved by the Department that inure to the benefit of ratepayers, shall be applied to reduce transition costs. St. 1997, c. 164, § 193 (G.L. c. 164, § 1A(b)(3)). In a settled restructuring plan, the Department found that an incentive for an electric company to reduce transition costs can inure to the benefit of ratepayers. D.P.U./D.T.E. 96-24, at 84 (1997). In particular, the Department found that an incentive can motivate a company to (1) seek the highest price for its divested assets while minimizing its transaction costs in doing so and (2) renegotiate above-market PPAs more aggressively and creatively than command-type regulation could induce. Id.

The record shows that, under the Plan, the Companies would receive incentive payments for merely charging transition costs at the forecasted level, would receive no additional payments for large reductions in transition costs that would further benefit ratepayers, and could receive incentive payments for changes in which the Companies play no role, such as for an increase in the market price for electricity or load growth above the Companies' forecasts, or for a higher forecast of market prices by a purchaser of above-market PPAs. The record shows that most of the incentive payments (61 percent for Commonwealth and 82 percent for Cambridge) are tied to the base-case level of the access charge rather than the amount of actual mitigation achieved, and flow to the Companies regardless of any mitigation. In contrast, most of the incentive payments (57 to 59 percent for MECo, EECo, and BECo) in restructuring settlements approved by the Department flow to those companies based on actual mitigation, with only a minority of the payments tied to the base-case level of the access charge (MECo Restructuring Plan, Book 2, at 65; EECo Restructuring Plan, Vol. 2, at 57; BECo Restructuring Plan at 244). The Department approved those incentive plans, overlooking some incentive payments not tied to mitigation, because most of the incentive payments were tied to actual mitigation. In this case, however, most of the incentive payments are not tied to actual mitigation. Recognizing this crucial difference, the Department finds that most of the Companies' proposed incentives, since they are not tied to actual mitigation accomplished, do not encourage aggressive mitigation and therefore do not inure to the benefit of ratepayers.

Accordingly, the Department directs the Companies to modify their incentive proposal so that all of it inures to the benefit of ratepayers, by tying incentive payments to actual mitigation results.[36] The Department reiterates its view that a properly designed incentive can inure to the benefit of ratepayers, by aligning the financial interests of shareholders and ratepayers and by motivating the Companies to maximize the net proceeds of divestiture and mitigate the transition costs from above-market PPAs as creatively and fully as possible. The proposed modified incentives should be substantial enough and structured appropriately to induce mitigation efforts, resulting in larger rate reductions than would otherwise occur. Such incentives would comply with the intent of the Legislature that any incentive mechanism result in lower transition costs and therefore benefit ratepayers. The modified incentive proposal must be filed within 30 days and before final bids are submitted in the Companies' divestiture and PPA auctions.

6. Return on Equity for Transition Charge Calculation

a. The Act

The Act specifies that the return on equity ("ROE") that a distribution company may include as part of its transition charge calculation shall be determined as follows:

(i) If the transition charge is less than or equal to 1.0 cent per KWH, the ROE shall be no more than one hundred basis points above the ROE allowed by the Department in its most recent adjudicated rate proceeding.

(ii) If the transition charge is more than 1.0 cent per KWH but not more than 2.0 cents per KWH, the ROE shall be the rate in (i) above, less one basis point for each 0.01 cents per

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36 The Department notes that Mr. Kirkwood, who is in charge of the Companies' mitigation efforts, testified that he had not considered the incentive in designing and implementing the Companies' mitigation efforts to date (Tr. 3, at 87-88).

KWH that the transition charge is above 1.0 cent per KWH.

(iii) If the transition charge is above 2.0 cents per KWH, the ROE shall be no more than the ROE in (i) above, less one hundred basis points, and less an additional two basis points for each 0.01 cent per KWH that the transition charge is more than 2.0 cents per KWH "above the market price for power provided under comparable terms." St. 1997, c. 164, § 193 (G.L. c. 164, § 1E).

b. The Plan

The Companies' Plan uses an ROE of 10.80 percent for Commonwealth and 9.90 percent for Cambridge in the calculation of the transition charge (Exh. CEC-1, Tab H at 4; Tab G at 3).

c. Positions of the Parties

(i) Attorney General

According to the Attorney General, in subsection (iii) of the description of the Act above, the last ten words in quotation marks including the market price in the comparison with the transition charge are the result of a drafting error (Attorney General Brief at 29). The Attorney General gives three reasons to support his contention. First, the last ten words in (iii) above destroy the parallelism between (ii) and (iii) above (id.). Second, the last ten words destroy the inverse relationship between the ROE and the level of the transition charge (id.). Third, the Attorney General argues that inclusion of the market price in the comparison with the transition charge makes no sense because then the ROE varies inversely with the market price for power over which the Companies have no control (id.).

According to the Attorney General, it is "obvious" that the Legislature intended and that "common sense" suggests a mitigation incentive that rewards or penalizes a company for factors over which the company has control, such as the level of the transition charge (id.). The Attorney General argues that the Department must disregard the last ten words of the referenced section of the Act; otherwise, it will be disregarding the intent of the Legislature (id.). Using his interpretation of the Act, the Attorney General calculates an ROE of 6.48 percent for Commonwealth and 9.54 percent for Cambridge (id. at 28).

(ii) Companies

The Companies argue that the Attorney General cannot ignore the language of the Act, because the meaning of the words is clear, and the Act is "detailed and comprehensive" (Companies Reply Brief at 41). Further, the Companies argue that the ROE of 6.48 percent that the Attorney General calculates based on his interpretation of the Act is lower than Commonwealth's debt rate and the return set by the Department. Therefore, the Companies assert that following the Attorney General's recommendation would clearly be confiscatory for Commonwealth (id. at 41). Noting that "[s]tatutes must be interpreted harmoniously with the Constitution," the Companies state that the Attorney General's interpretation does not meet this standard (id. at 42).

d. Analysis and Findings

The Department notes the concerns raised by the Attorney General regarding the problems associated with accepting the language of the Act at face value. In particular, the Department notes the violation of an inverse relationship between the level of the transition charge and the return on equity used for calculating the transition charge. Such a violation removes, at least to some extent, the incentive to a distribution company to reduce its transition charge. The Department also notes the Attorney General's argument that adherence to the language of the Act results in rewarding or penalizing the distribution company for changes in the transition charge due to factors beyond the control of the Companies, such as the market price of power.

Nevertheless, the Department cannot ignore the plain language of the Act, particularly when the Act is detailed and precise. Therefore, we reject the Attorney General's argument and accept the Companies' proposal for a return on equity of 10.8 percent for Commonwealth and 9.9 percent for Cambridge for the purposes of calculating a return on the fixed component of the transition charge. However, if the Legislature revises the section of the Act discussed here, we may, at that time, require an adjustment to the return on equity to be used for Cambridge's and Commonwealth's transition charge calculations.

7. Reconciliation Account: Rate of Return and Base Transition Charge Adjustments

a. The Plan

According to the Companies' Plan, the difference between the estimated variable costs included in the transition charge and the actual variable costs will accumulate in a reconciliation account (Exh. CEC-1, Tab H at 9). The reconciliation account will include a return equal to the carrying charge for the fixed component of the transition charge, which is equal to 13.51 percent for Commonwealth (id., Tab H at 4 and 9). According to the Plan, the reconciliation account for Commonwealth will accumulate the differences between the estimated and actual variable costs until December 31, 2000, and on January 1, 2001 will be used to adjust the base transition charge either to recover or to repay the under- or over-recovery in the reconciliation account (id., Tab H at 9). After January 1, 2001, the base transition charge will be adjusted at the end of every year to allow recovery or repayment of the amount in the reconciliation account (id.). However, the adjustments will be limited to ensure that the transition charge does not exceed 4.26 cents per KWH for Commonwealth (id.). Any amounts in the reconciliation account that would increase the transition charge over the 4.26 cents per KWH limit will be deferred to the following year, and will earn a return equal to the carrying charge (id., Tab H at 9-10).

Similarly for Cambridge, the reconciliation account will include a return equal to the carrying charge for the fixed component of the transition charge, which is 12.69 percent (id., Tab G at 3 and 8). However, for Cambridge the first adjustment to the base transition charge will be made on the earlier of January 1, 1999 or the date of divestiture. Thereafter, adjustments to the base transition charge will made at the end of each year, with the adjustments limited to ensure that the transition charge does not exceed 2.73 cents per KWH (id., Tab G at 8). Just as with Commonwealth, any amounts in the reconciliation account that would increase the transition charge over the 2.73 cents per KWH limit will be deferred to the following year, and will earn a return equal to the carrying charge (id., Tab G at 8).

b. Positions of the Parties

When asked why they would delay adjustments to the base transition charge of Commonwealth until the year 2001, the Companies stated that if the adjustment were positive, reflecting an under-recovery, before the year 2001 it would cause the transition charge to exceed the initial level of 4.26 cents per KWH (Tr. 7, at 55). However, they did agree to an adjustment to reflect an over-recovery before the year 2001, and provided modified language for that section of the Plan (Tr. 7, at 55; DPU-RR-34).

On the issue of the return applied to the reconciliation account, the Companies indicated that they used the carrying charge to be consistent with the other distribution companies that have filed restructuring plans with the Department under settlements (Tr. 7, at 59). The Companies conceded that any under-recoveries in the reconciliation account would be funded by "short-term financing," would not constitute "bondable property" and would not require an equity contribution from shareholders (id. at 58-59).

No other parties commented on this issue.

c. Analysis and Findings

Regarding the delay in adjusting the base transition charge until the year 2001, the Department finds that there is no reason to postpone adjustment of over-recoveries. Ratepayers should see benefits of reduced transition charges as soon as possible. However, the Department finds that it would not be appropriate to collect under-recoveries in the reconciliation account from ratepayers before the year 2001 for Commonwealth, because such action would cause the transition charge to exceed the initial level of 4.26 cents per KWH set by the Companies in their Plan, in violation of the Act. St. 1997, c.164, § 193 (G.L. c. 164, § 1G(e)). Therefore, we direct the Companies to modify the section on the reconciliation account in Volume I, Tab H, Exhibit IV, page 9, Section 1.2.1 of their Plan in accordance with the Companies' response to DTE-RR-34. The Department notes that no change is required to the section on the reconciliation account for Cambridge because the Plan allows adjustments beginning on the earlier of January 1, 1999 or the date of divestiture, and the base transition charge for Cambridge is not fixed for the years 1998 through 2000 as it is for Commonwealth.

On the issue of the return to be applied to the balance in the reconciliation account, the

Department finds, based on the Companies' testimony, that the financing of the balance does not require equity contributions from shareholders. Instead, as the Companies testified, short-term financing would be used. Therefore, we find that a carrying charge that includes an equity component should not be used to calculate the return on the balance in the reconciliation account, but instead the return should be based on an appropriate interest rate. The Companies stated that the deferral account that would include the differences between the costs paid to suppliers of electricity and the standard offer generation revenues collected from customers, accrues interest at the same rate as customer deposits (Tr. 7, at 181). The Department finds that this is an appropriate interest rate to be applied to the balance in the reconciliation account.

Using the same interest rate for the transition charge reconciliation account and the deferral account for standard offer generation costs has another benefit; it removes any bias on the part of the Companies in the selection of supply resources for the standard offer. If the return on the reconciliation account is higher, the Companies may have an incentive to use their own PPAs for supplying standard offer service rather than obtaining supplies from the market, because using their own PPAs would put under-recoveries in the transition charge account while using market purchases would put under-recoveries in the deferral account.

The Companies argue that using the carrying charge for calculating the return on the balance in the reconciliation account is consistent with the other restructuring plans that have been filed and approved by the Department. The Department notes that there is a key difference in the transition charges filed by the other three companies, MECo, EECo, and BECo, and those filed by the Companies in this proceeding. The variable component of the transition charge forms a much larger fraction of the total transition charge in this proceeding.

Over the period 1998 to 2000, for Cambridge and Commonwealth, the variable component forms from 70 to 92 percent of the total transition charge, while for MECo, EECo, and BECo it forms from 46 to 59 percent of the total transition charge.[37] The increased contribution of the variable component of the transition charge justifies the use of an alternative rate of return on the reconciliation account in this proceeding compared to the rate of return used in the previously filed restructuring plans.

Based on the foregoing, the Department directs the Companies to use the interest rate used for customer deposits for application to the balance in the reconciliation account.

8. Capital Structure to Use for the Transition Charge

a. The Plan

In the calculation of the transition charge, the Companies have included revenues sufficient to provide an overall pre-tax return of 13.51 percent for Commonwealth and 12.69

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37 The contribution of the variable component of the transition charge to the total transition charge is given in the following table:

Company	1998	1999	2000
MECo	50%	47%	46%
EECo	59%	56%	55%
BECo	55%	57%	55%
Commonwealth	86%	87%	84%
Cambridge	70%	92%	92%

Sources: D.P.U. 96-25, Exh. MECo-1, Vol. 2, at 62; D.P.U./D.T.E. 96-24, Exh. EECo-1, Vol. 2, at 54; D.P.U./D.T.E. 96-23, Exh. BE-1, at 241; Exh. CEC-1, Tab H, Sch. 1, at 1; Exh. CEC-1, Tab G, Sch. 1, at 1.

percent for Cambridge (Exh. CEC-1, Tab H at 4, and Tab G at 3). These rates of return are based on the capital structure and costs of the retail companies, Cambridge and Commonwealth (id.).

b. Positions of the Parties

i. Attorney General

The Attorney General states that using the capital structure of the stand-alone retail companies would be appropriate if the stranded generation investment were on the books of the retail companies (Attorney General Brief at 25). He asserts, however, that the bulk of the fixed investments of Cambridge and Commonwealth are on the books of Canal Electric and are supported by the capital structure of Canal (id. at 25-26). He, therefore, recommends that the capital structure of Canal be used as the basis for the carrying charge for these investments rather than the capital structures of Cambridge and Commonwealth (id. at 26).

ii. Companies

The Companies argue that since Cambridge and Commonwealth will compute, and be responsible for, the transition costs, Cambridge's and Commonwealth's capital structures should be used for calculating the transition charge (Companies Reply Brief at 39). Further, the Companies argue that Canal will be divesting its generating assets and will be retiring its existing debt with the proceeds; therefore, the capital structure of Canal "will have no relevance" (id.).

c. Analysis and Findings

The Department is not persuaded by the Companies' argument. The Department finds that there is no reason for the company which computes the transition costs and is responsible for collecting those costs from the ratepayers to be the company whose capital structure is used to calculate the transition charge. The most important criterion in the decision regarding the appropriate capital structure is which capital structure supports the investments for which the transition costs are being computed. The Department notes that Canal raised the capital for the construction and operation of the generating units owned by it, and Canal's capital structure continues to support those investments. Therefore, for those assets that are owned by Canal, we direct the Companies to use Canal's capital structure, including a 10 percent reduction in the return on equity for Canal as was proposed for Cambridge and Commonwealth.

9. Calculation of Cost of Debt

a. The Plan

In the calculation of the transition charge, the Companies have included revenues sufficient to provide an overall pre-tax return of 13.51 percent for Commonwealth and 12.69 percent for Cambridge (Exh. CEC-1, Tab H at 4, and Tab G at 3). This return includes a long-term debt component with a cost of 8.85 percent for Commonwealth and 8.90 percent for Cambridge (id. Tab H, Schedule 1 at 9, Tab G, Schedule 1 at 9).

b. Positions of the Parties

i. Attorney General

The Attorney General states that the Companies have made errors in the calculation of the cost of debt (Attorney General Brief at 26). According to the Attorney General, the Companies include issuance costs and unamortized loss on reacquired debt as regulatory assets, and also reflect these same costs in the debt rate by netting out these issuance costs from the balance of each debt series before determining the debt cost rate (id. at 26-27). According to the Attorney General, this method of dealing with debt costs is in conflict with the Department's precedent established in the Berkshire Gas Company case, D.P.U. 92-210, for two reasons. First, the Attorney General states that these costs should not be included as regulatory assets but should be included only as a component of the debt cost rate (id. at 26). Second, according to the Attorney General, even the method used by the Companies to reflect these issuance costs in the cost of debt is inconsistent with the Berkshire precedent (id. at 27).

ii. Companies

The Companies state that the Attorney General "misconstrued the record" on the first issue of including issuance costs as a regulatory asset (Companies Reply Brief at 40). The Companies state that the debt costs of the retail companies have not been included as a regulatory asset, but have been used to adjust the effective cost of debt (id.). Only the debtcosts of Canal have been included as a regulatory asset after being computed in accordance with FERC precedent (id.). The Companies assert that because these costs have not been otherwise included in rates, they qualify as a regulatory asset (id.).

Regarding consistency with Department precedent on the method for reflecting debt issuance costs, the Companies acknowledge that they made an error and have provided revised calculations of the debt rate that they are willing to use to adjust the carrying charges (id.).

c. Analysis and Findings

The Department finds that debt issuance costs for Canal have been appropriately included as a regulatory asset. The Department notes the corrections made by the Companies in the reflection of debt issuance costs in the cost of debt for Cambridge and Commonwealth, and directs the Companies to incorporate the revised debt rates in their calculations of transition costs and provide revised rates and schedules.

10. Recognizing Changes in Capital Structure

a. The Plan

The Plan states that the rate of return used for the calculation of the transition charge will be changed to reflect any savings from securitization (Exh. CEC-1, Tab H, at 4, n.2; Exh. CEC-1, Tab G, at 3, n.2). However, the Plan is silent on the effect of other changes in the capital structure on the rate of return.

b. Positions of the Parties

i. Attorney General

The Attorney General states that according to the Companies' testimony during cross-examination, they do not intend to pass on to ratepayers the benefits of any refinancings other than those that result from securitization (Attorney General Brief at 30). The Attorney General lists events, other than securitization, that could affect the carrying charge, such as refinancing, equity retirement, or other mechanisms yet to be created, and asserts that the benefits of these changes should flow to ratepayers (id. at 30-31). According to the Attorney General, by not changing the transition charge to reflect changes in the capital structure, the Companies' Plan violates the mitigation requirements of the Act (id. at 30).

ii. Companies

The Companies state that the record may not be clear on the issue of passing on to ratepayers the benefits of changes in the capital structure (Companies Reply Brief at 42). The Companies state that they fully intend to adjust the carrying charge rate for the transition charge calculation to reflect changes in the capital structure and will "ensure that their Plan comports to this intent" (id.).

c. Analysis and Findings

The Department agrees with the Attorney General that the benefits of all changes in the capital structure, not just those achieved through securitization, should flow to ratepayers. The Companies have stated their intent to do so and to modify their Plan to comport with this intent. We therefore direct the Companies to modify their Plan and state explicitly that the carrying charge used for the transition charge calculation will be changed to reflect all changes to the capital structure and that the resulting benefits will be passed on to ratepayers.

E. Quality of Service

1. The Act

The Act requires that the Department ensure that the quality and reliability of service are the same or better than levels that existed on November 1, 1997. St. 1997, c. 164, § 193 (G.L. c. 164, § 1F(7)).

2. Positions of the Parties

The Companies have not included any standards for quality of service in their Plan. In response to an information request from the Department asking how the Companies will ensure that the quality of service provided to customers will not deteriorate after the retail access date, the Companies said that they are committed to providing quality service (Exh. DTE-1). Further, the Companies stated that they are committed to working with the Department to "establish meaningful benchmarks" for quality of service (id.). No other parties commented on this issue.

3. Analysis and Findings

Quality of service is an important issue and the Department determines that it is best addressed through the development of comprehensive quality of service standards. However, we believe that a generic proceeding would be the appropriate forum for developing these standards, for it would allow a consideration of performance and service quality issues across all distribution companies and would lead to a fair and consistent treatment of all the distribution companies in the Commonwealth.

In the interim period between the retail access date and the conclusion of the generic proceeding, the Department will monitor the service quality of Cambridge and Commonwealth to ensure that the quality and reliability of service are the same or better than levels that existed on November 1, 1997. If there are problems with the service quality, the Department will use its authority to initiate a proceeding to address the problems.

F. Other Issues

1. Demand-Side Management ("DSM")

a. The Act

The Act directs the Department to require a mandatory charge per KWH for all electricity customers of the Commonwealth (except those of municipal light plants) to fund energy efficiency activities, including DSM, in amounts not to exceed the following: 3.3 mills ($0.0033), 3.1 mills, 2.85 mills, 2.7 mills, 2.5 mills per KWH in each of the years 1998 through 2002, respectively. St. 1997, c. 164, § 37 (G.L. c. 25, § 19). At least 20 percent of the amount to be spent on residential DSM, and at least 0.25 mills per KWH (which charge shall also be continued in the years after 2002), must be spent on comprehensive low-income

DSM and education programs, to be implemented through the existing low-income weatherization and fuel assistance program network, and coordinated with all gas and electric companies in the Commonwealth. Id. The Act authorizes DOER to oversee and coordinate ratepayer-funded DSM in order to achieve goals that include equity in the allocation of funds among customer classes, support for "lost opportunity" programs, elimination of market barriers through state-wide market transformation activities, and the provision of weatherization and efficiency services to low-income customers. Id. at § 50 (G.L. c. 25A, § 11G). The DOER must file a report annually with the Department on proposed funding levels for energy efficiency programs, and the Department must review and approve expenditures for programs found to be cost-effective. Id. Finally, the Act stipulates that a municipality or group of municipalities that establishes a load aggregation program ("municipal aggregator") may submit for Department approval an energy plan that calls for the implementation of DSM programs "consistent with any state energy goals developed pursuant to chapter 25A or chapter 164." G.L. c. 164, § 134(b). If the municipal energy plan is approved, the municipal aggregator may expend monies collected by a distribution company through its energy efficiency charge in an amount not to exceed that contributed by retail customers within the boundaries of the municipal aggregator. Id.

b. The Plan

The Plan includes funding levels that conform to the Act's mandate (Exh.CEC-1 at 56). As outlined in the Plan, the Companies currently implement a broad spectrum of DSM programs including services to Low-Income customers coordinated with the South Middlesex Opportunity Council and local weatherization assistance program agencies (id. at 56). The

Companies claim that they will likely continue these programs during the next five years (id. at 56). In addition the Companies state that they have undertaken emerging technologies/market transformation efforts and will work with interested parties to determine which efforts should continue during the five-year period. (id. at 56).

The Companies state that they will collaborate with other parties in the final development and subsequent implementation of their five-year energy efficiency plan. The details regarding the annual budgets and specific programs to be offered over the next five year period will be included in the plan which the Companies will file with the Department by April 1, 1998 (id. at 57, 60).

c. Positions of the Parties

i. The Compact

The Compact states that the Companies' Plan lacks detailed information about how the Companies plan to expend or allocate the energy efficiency funds among interested towns, referring instead to the ongoing five-year collaborative planning process in which the Compact was recently invited to participate (Compact Brief at 31). The Compact recommends that the Department defer making any decision on the Plan with respect to DSM and alternative energy programs until the Companies submit subsequent filings that can be reviewed by all parties. (id. at 31-32).

ii. CISR

CISR is concerned that any new energy efficiency contracts which the Companies enter into may preclude qualifying municipal governments from having access to those committed portions of the funds or from managing certain energy efficiency programs (CISR Brief at 3).

CISR recommends that the Companies include in all new contracts with energy service vendors, provisions to transfer contracts to qualifying municipalities (id. at 3-4). The Companies submitted sample contract language to address this concern; however, CISR contends that the language is not specific enough to address their concerns (id. at 4). In addition, CISR recommends that the Companies not enter into any new contracts with energy efficiency vendors that extend beyond a year (id.).

CISR recommends that the Department determine that the energy efficiency portion of the Plan is not in compliance with the Act and reject the Companies Plan as proposed, or provide a conditional approval of the Plan pending Department review and approval of the five year energy efficiency plan (CISR Reply Brief at 4). In addition, CISR urges the Department to find that the Companies have no role in reviewing municipal energy plans, consistent with the requirements of the Act (id.).

iii. Attorney General

The Attorney General submits that the issue of allocation of dollars for energy efficiency programs, including issues raised by CISR, should be resolved in the Companies' five-year DSM plan filing (AG Brief at 36).

iv. The Companies

The Companies submit that the Plan complies with the requirements to collect and expend funds to support energy efficiency programs (Companies Brief at 56). Furthermore, the Companies will collect the $0.0033 per KWH for the balance of 1998, and collections will reduce each year until 2002, when only $0.0025 per KWH targeted to programs for low-income customers will remain (id.). The Companies assert that they offer a wide range of programs as outlined in the Plan and are participating in a collaborative process relating to future program design and annual budgets (id.).

The Companies assert that their DSM program is in full compliance with the Act (id.). The Companies state they will continue their collaborative process to develop and refine a comprehensive five-year energy efficiency program which will be filed with the Department by April 1, 1998 (id.). The Companies offer that new programs will start July 1, 1998, subsequent to Department approval. In the meantime, the Companies will implement their initial program with collection of a mandatory charge starting March 1, 1998 (id.).

The Companies contend that the Compact's and CISR's concerns regarding allocation of funds are premature (Companies Reply Brief at 54). Furthermore, the Companies state that they are not opposed to providing the interested parties with the DSM funds. However, funds will be allocated at the appropriate time (id.). The Companies note that CISR and the Compact have not complied with G.L. c. 164, § 134(b) by adopting energy plans and filing them with the Department for approval (id.).

The Companies state that they are opposed to CISR's proposal to have the Department require the Companies to include contract provisions to transfer energy efficiency contracts to qualifying municipalities (id.). The Companies assert that municipalities should design and implement their own programs consistent with their approved plans (id.).

d. Analysis and Findings

The Companies have agreed to the mandatory charges per KWH to fund energy efficiency and DSM activities as required by the Act. In addition, the Companies have established an energy efficiency program as required by the Act. All other issues regarding cost allocation or program design can be resolved within the Companies' five-year energy efficiency program. Thus, the Department finds that the Companies' program for energy efficiency complies with the Act. The Department notes, however, that our approval of the Plan is subject to adjustment at such time as the Department approves a municipal energy plan in accordance with G.L. c. 164, § 134(b).

2. Renewable Resources

a. The Act

To support the development and promotion of renewable energy projects, the Act authorizes and directs the Department to require a mandatory charge per KWH for all electricity consumers in the Commonwealth (except those consumers served by a municipal lighting plant that does not supply generation service outside its own service territory or does not open its service territory to competition at the retail level). St. 1997, c. 164, § 37 (G.L. c. 25, § 20(a)(1)). The Act sets the non-bypassable charge at the following levels: 0.75 mills per KWH in 1998, followed by 1.00, 1.25, 1.00, and 0.75 mills in each of the years 1999 to 2002, respectively, and 0.50 mills per KWH thereafter. Id. The Act further requires that in each year, 0.25 mills per KWH be dedicated to the retirement or retrofit of municipal solid waste

("MSW") facilities. Id. (G.L. c. 25, § 20(a)(2)). The revenues generated by this charge shall be remitted to the Massachusetts Technology Park Corporation ("MTPC") and deposited into the Massachusetts Renewable Energy Trust Fund ("Fund"). Id. (G.L. c. 25, § 20(c)). In addition, the Act provides for the continuation of "net metering," for on-site generation or cogeneration facilities, including renewable facilities, of 60 kilowatts ("KW") or less. Id. at § 193 (G.L. c. 164, § 1G(g)).

b. The Plan

The Plan includes funding levels that conform to the Act's mandate to fund renewable resource programs (Exh.CEC-1 at 56). The Plan states that it is anticipated that the revenues generated will be remitted to the Massachusetts Technology Park Corporation to promote renewable energy in the Commonwealth (id.).

c. Analysis and Findings

There were no comments regarding the Companies proposal for renewable resources. The Companies have agreed to the mandatory charge per KWH as defined in the Act. The Department finds that the Companies' Plan for renewable resource programs complies with the Act.

VII. CONCLUSION

In determining whether the Companies' Plan substantially complies or is consistent with G.L. c. 164 and meets the requirements of any other applicable law, the Department has considered the stated purposes and major features of the Act and determined that the portions of the Plan governed by G.L. c. 164 substantially comply or are consistent with the Act, provided that the Companies address in a compliance filing the modifications required by this

Order. We find that these portions of the Plan substantially comply or are consistent with the stated goals and main features of G.L. c. 164: provision of customer choice of generation supplier by March 1, 1998; a 10 percent rate reduction for customers choosing the standard offer; an accounting of stranded costs and a mitigation plan based on the sale of generating plant and entitlements; a non-bypassable charge to collect stranded costs; the provision of standard offer service for seven years; unbundled rates; a general inflation cap and a cap on the stranded cost charge; default service; continuation of low-income discounts, and universal service. Further, the Plan does not prevent the Companies from complying with regulations implementing performance standards and rules of conduct regarding affiliates. The Department also finds that the portions of the Plan addressing renewables and DSM are in full compliance with G.L. c. 25, §§ 19, 20.

Therefore, the Department finds that the Plan substantially complies or is consistent with G.L. c. 164 and is in full compliance with other provisions of the Act. Accordingly, the Department hereby approves the Plan and allows it to be implemented. Further, upon approval of the Companies' compliance filing, the Department authorizes the Companies to collect a transition cost charge as specified in the Act, according to the formulas embodied in the Plan, as modified. This authorization is contingent upon the Companies' commencement of actual mitigation efforts, implementation of retail access, and subject to reconciliation as specified in the Act.

VIII. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED: That the tariffs M.D.P.U. Nos. 586 through 609, filed by Cambridge Electric Light Company, and tariffs M.D.P.U. Nos. 336 through 358, filed by Commonwealth Electric Company, which would apply to electric service consumed on or after the March 1, 1998 Retail Access Date, be and hereby are disallowed; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company shall design and file tariffs in compliance with this Order; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company shall comply with all other orders and directives contained herein; and it is

FURTHER ORDERED: That the new rates shall apply to electricity consumed on or after the March 1, 1998 Retail Access Date, but unless otherwise ordered by the Department, shall not become effective earlier than seven (7) days after they are filed with supporting data demonstrating that such rates comply with this Order.

By Order of the Department,

Janet Gail Besser, Chair

John D. Patrone, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).